

EXHIBIT F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

NESTOR ALMONTE,

Plaintiff,

-against-

4376 MORRIS PARK, LLC d/b/a F&T MANAGEMENT
CO., INC.,

Defendants.

- - - - -x

600 Old Country Road
Garden City, New York

February 26, 2015

1:45 p.m.

DEPOSITION of CHANINA KLAHR, a witness on
behalf of the Defendant herein, held at the above
time and place, taken before Karen Zammit, a
Shorthand Reporter and Notary Public of the State
of New York, pursuant to Rule 26 et seq. of the
Federal Rules of Civil Procedure and stipulations
between Counsel.

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APPEARANCES:

VALLI KANE & VAGNINI, LLP

Attorneys for Plaintiff

600 Old Country Road

Garden City, New York 11530

BY: ROBERT P. VALLETTI, ESQ.

GOLDBERG & WEINBERGER, P.C.

Attorneys for Defendant

630 Third Avenue

New York, New York 10017

BY: STUART WEINBERGER, ESQ.

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STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED, by and among counsel for the respective parties hereto, that the filing, sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

* * *

1

2 C H A N I N A K L A H R, the Witness herein,
3 having first been duly sworn by the Notary
4 Public, was examined and testified as follows:

5 EXAMINATION BY

6 MR. VALLETTI:

7 Q What is your name?

8 A Chanina Klahr.

9 Q What is your address?

10 A 730 East 7th Street, Brooklyn, New
11 York 11218.

12 Q Good afternoon, Mr. Klahr.

13 A Good afternoon.

14 Q I know you have met me before, but
15 my name is Robert Valletti and I am from Valli
16 Kane and Vagnini.

17 We represent plaintiff Nestor
18 Almonte in this case who has instituted a lawsuit
19 to recover lost wages in the form of overtime,
20 minimum wage and spread of hour pay.

21 A Yes.

22 Q I will be asking you some questions
23 today. If you don't understand anything that I
24 ask, let me know. I will be more than happy to
25 repeat or rephrase. If you answer a question we

1 C. Klahr

2 will assume that you understood it and that the
3 answer is responsive to the question.

4 Please answer all questions
5 verbally. As you know, we have a court reporter
6 here and she cannot take down hand gestures or
7 nods of the head or things of that nature.

8 A Yes.

9 Q Also, please let me finish my
10 question before you answer and I know that you
11 might know where I am going with the question
12 before I complete it, but please do let me finish
13 before you answer.

14 I will give you all the time you
15 need to answer. If you would like to take a
16 break, please let me know. If a question is
17 pending, answer that question and then we can
18 take the break. There are no breaks while a
19 question is pending.

20 A Okay.

21 Q Are you currently taking any
22 medications?

23 A No.

24 Q Is there any reason why you cannot
25 tell the truth today in response to my questions?

1 C. Klahr

2 A No.

3 Q How long have you lived at your
4 current address?

5 A Maybe ten years.

6 Q Do you have any other residences?

7 A No.

8 Q What is your highest level of
9 education?

10 A High school.

11 Q No secondary schools?

12 A I did take -- I did take some
13 other degrees. I didn't finished. My highest
14 level that I finished was high school.

15 Q You started other education but
16 didn't complete it?

17 A Yes.

18 Q You attended college or a different
19 school?

20 A A different school.

21 Q What kind of school?

22 A An academy that they give different
23 equivalency degrees.

24 Q Are you currently employed?

25 A I am in the process of opening a

1 C. Klahr

2 business, private business.

3 Q Does that business have a name yet?

4 A Yes.

5 Q What is the name of the business?

6 A Challenge Pest Control.

7 Q Is it currently operational?

8 A No.

9 Q Other than this employment who were
10 you last employed by?

11 A Prior to this?

12 Q Yes.

13 A Chai Lifeline.

14 Q What was your position there?

15 A Office administrator.

16 Q What was the time period that you
17 worked for them?

18 A Approximately two years.

19 Q What was the beginning and end
20 year?

21 A Probably 2002 or 2004..

22 Q For the period of 2004 up until the
23 beginning of the pest control company you were
24 unemployed?

25 A No, I worked for F&T Management. I

1 C. Klahr

2 I worked at F&T Management from 2004 until
3 recently.

4 Q When did your employment with F&T
5 Management end?

6 A I left in September, the end of
7 August of 2014.

8 Q You said you worked for F&T
9 Management. Is that its own entity?

10 A That's the name of the group.

11 Q Could you explain what you mean by
12 the group?

13 A That's what we called ourselves.
14 It may not be an official business name, but
15 that's how the vendors knew us, the initials of
16 the owners, Finkelstein and Tabak. That's how
17 they knew us.

18 Q Meaning the vendors?

19 A Any business relationships that we
20 had with anyone referred to us as just -- it was
21 a lot easier than saying Finkelstein and Tabak
22 each time.

23 Q It was your understanding from 2004
24 to 2014 that you worked for F&T Management?

25 A Yes.

1 C. Klahr

2 Q Did you work for any other
3 companies during that time period?

4 A No.

5 Q You were not employed by 437 Morris
6 Park?

7 A No, but that would just be part of
8 F&T Management. Each building has its own --
9 each site has its own legal entity. I was not
10 technically paid from 437 Morris Park LLC.

11 Q Who paid you?

12 A 855 East Tremont LLC for
13 approximately eight years. Then I was paid by
14 New Hope Funding Transitional Housing.

15 Q Is that the name thing as the New
16 Hope Funding LLC?

17 A Yes, new Hope something.

18 Q What was your position with F&T
19 Management?

20 A I was hired to be a site manager at
21 several of the buildings that they -- several
22 residential apartment buildings that were being
23 turned into homeless shelters.

24 Q How many buildings were you hired
25 to be the site manager for?

1 C. Klahr

2 A Between four and six buildings, it
3 varied at different times.

4 Q Four and six?

5 A Yes.

6 Q Can you name the four to six
7 buildings, please?

8 A Sure. 1056 Boynton, 1101 Manor,
9 437 Morris Park, 1195 Sherman, 855 East Tremont
10 and 1011 Walton Avenue.

11 Q Was that simultaneously?

12 A Yes.

13 Q That was continuously from 2004 to
14 2014, you were the site manager?

15 A Except for the last two that I
16 mentioned. For the last three or four years it
17 was only the first four on the list.

18 Q As a site manager what were your
19 responsibilities?

20 A It was my responsibility to oversee
21 the staff that would be doing repairs in the
22 buildings.

23 Q What do you mean by oversee?

24 A I have to make sure that they are
25 doing their job.

1 C. Klahr

2 Q Can you tell me specifically what
3 authority you had?

4 A I had authority to hire and fire
5 and maybe choose vendors.

6 Q Before when you said that you were
7 overseeing the staff you gave the direct orders
8 to the staff?

9 A Yes.

10 Q What was the composition of the
11 staff, what types of positions were there?

12 A Exclusive to each site would be one
13 superintendent and one porter. In addition to
14 that we supplied on a roving basis, on an
15 as-needed basis, a handyman to support the
16 superintendent to be able to expedite the work.
17 He might at my discretion get a helper or two
18 helpers depending on my discretion.

19 Q One or two handymen and a porter
20 and a superintendent was a typical composition of
21 one building?

22 A Yes.

23 Q What determined if you needed one
24 or two handymen, the size of the building or
25 something else?

1 C. Klahr

2 A The nature of the workload. It was
3 in our interests to expedite and finish as soon
4 as possible. We gave him helpers to help him get
5 it done in a more timely fashion.

6 Q How was the workload amassed
7 typically?

8 A I would give the superintendent
9 printed work orders. In the last five years
10 those work orders were actually generated by a
11 Social Service agency named Aguila, which was an
12 in-house Social Service agency.

13 Prior to them it was our own Social
14 Service department or actually a lot of it was
15 myself. We would go through the apartments and
16 create lists between myself and the social
17 workers.

18 Q Who is Aguila?

19 A These sites are all homeless
20 shelters and there is an on-site Social Service
21 department that assists the families there and
22 the various needs that they have. That's what
23 they are.

24 Q Aguila performs that service?

25 A Yes, they are a Social Service

1 C. Klahr

2 agency.

3 Q Who does Aguila perform that
4 service for specifically?

5 A To the resident.

6 Q Does Aguila have an office at a
7 particular building like 437 Morris Park?

8 A They have rooms in every building.
9 They have offices, but executive offices, no,
10 that's elsewhere, not our premises. Each site
11 has a dedicated or several offices with several
12 staff members, but that's not their executive
13 office. Their executive office is somewhere
14 else.

15 Q Have you ever given testimony
16 before?

17 A I don't think so.

18 Q You never sat for any other
19 depositions?

20 A No. I just sat through so many
21 recently with this case, but I don't recall
22 others, no.

23 Q You mentioned other depositions
24 that you sat through for this case. You were
25 present at the deposition of Nestor Almonte,

1 C. Klahr

2 correct?

3 A Yes.

4 Q That was in three segments and you
5 attended all of them, correct?

6 A Yes.

7 Q Wilton, you sat through his
8 deposition as well, Wilton Munoz?

9 A Yes.

10 Q The deposition of Mildred Munoz as
11 well?

12 A Yes.

13 Q Have you ever appeared in front of
14 the unemployment appeal board before and given
15 testimony?

16 A For Nestor Almonte.

17 Q Prior to that?

18 A No.

19 Q Who is Nestor Almonte?

20 A Nestor Almonte is this case that
21 you are referring to that we are involved in.

22 Q He is a person?

23 A Yes, the case that we are involved
24 in. He is the person bringing this case.

25 Q The plaintiff?

1 C. Klahr

2 A Yes.

3 Q Did you know him before he was a
4 plaintiff in this case?

5 A Yes.

6 Q When was the first time that you
7 met Nestor Almonte?

8 A The first time I met him was, to
9 the best of my recollection, was in February of
10 2011.

11 Q Does he go by any other names?

12 A Yes, Lopez.

13 Q Was he ever employed by one of the
14 companies that you were the site manager for?

15 A Yes.

16 Q What companies did Nestor Almonte
17 or Lopez work for?

18 A 437 Morris Park LLC and 1195
19 Sherman LLC.

20 Q When you met him in 2011 how did he
21 introduce himself?

22 A He was introduced to me by Wilton
23 Munoz as the superintendent at 1056 Boynton. I
24 was looking to hire a super at the time. Wilton
25 introduced me to him.

1 C. Klahr

2 Q Who is Wilton Munoz?

3 A He is the superintendent at 1056
4 Boynton LLC.

5 Q Currently?

6 A No, but until recently.

7 Q Is there a relationship between
8 Lopez and Wilton Munoz?

9 A Yes.

10 Q What is that relationship?

11 A They are brother-in-laws.

12 Q At some point Lopez became employed
13 by 437 Morris Park first; is that correct?

14 A He was a handyman, which all
15 handymen worked under 1195 Sherman, that's our
16 management umbrella. He worked under 437 Morris
17 Park after a short trial period.

18 Q The trial period was under 1195
19 Sherman?

20 A I don't recall.

21 Q When he first started working where
22 was he working?

23 A He worked for -- I like to have my
24 guys give me a trial basis of an at least two
25 weeks. After two days he walked away. He worked

1 C. Klahr

2 at 1056 Boynton for several days and then we then
3 put him onto 437 Morris Park. It was a very
4 short period. I am not sure if it was those two
5 days at 1056 Boynton. It was a very short period
6 of time he was at 1056 Boynton.

7 Q While he was at 1056 Boynton he was
8 a handyman, correct?

9 A Yes.

10 Q What kind of work was he doing as a
11 handyman?

12 A They would assist the
13 superintendent by doing general repairs of the
14 apartment which is some plumbing repairs, some
15 electrical repairs.

16 Q Painting?

17 A Of course plastering and painting.

18 Q Fixing leaks?

19 A Yes, that would be plumbing.

20 Q That's the first time that Lopez or
21 Nestor Almonte began working, at 1056 Boynton as
22 a handyman, correct?

23 A Yes.

24 Q You said you put him on at 437
25 Morris Park, what did you mean by that?

1 C. Klahr

2 A I had a superintendent that was
3 leaving at 437 Morris Park. He was being
4 terminated and we put him there to take over that
5 position.

6 Q Who was the superintendent being
7 terminated?

8 A Ernest Torres.

9 MR. VALLETTI: Off the record.

10 [Whereupon, a discussion was held
11 off the record.]

12 Q When Nestor Almonte was employed as
13 a handyman at 1056 Boynton for that short period
14 of time how was he paid, if at all?

15 A He would have gotten a check.

16 Q Are your employees paid by checks
17 in their name?

18 A Yes. Once they get a designated
19 job, yes.

20 Q There should be pay stubs or checks
21 in Nestor Almonte's name while he worked at 1056
22 Boynton, correct?

23 A There should be.

24 MR. VALLETTI: I will make a demand
25 for the pay stubs for Nestor Almonte for

1 C. Klahr

2 the time period that he worked at 1056

3 Boynton.

4 Q What was your intention when you
5 first moved him to 437 Morris Park, what position
6 was he going to hold?

7 A Superintendent.

8 Q He was being promoted from handyman
9 to a superintendent?

10 A No. That's the way I try out a
11 candidate to become a superintendent. I first
12 use them as a handyman for a while. When I see
13 that they can handle the work and they can
14 actually do what they say they can do then I
15 would consider them for a superintendent
16 position.

17 Q How long did he work at 1056
18 Boynton?

19 A I believe two or three days.

20 Q Is that the normal period that you
21 test someone's skills before determining if they
22 can handle a superintendent job?

23 A No. He completed that at a later
24 time. He gave me a few weeks at 437 Morris Park.
25 There was a couple of weeks at 437 Morris Park

1 C. Klahr

2 before he became a superintendent that he had to
3 work there as the handyman.

4 Q He was first transferred to 437
5 Morris Park as a handyman and he continued his
6 test period; is that correct?

7 A Yes. The existing outgoing
8 superintendent may have already not been working
9 so we may have called him a super at that time,
10 but he was not designated as the super yet.

11 Q At the time that he was transferred
12 to 437 Morris Park to become super, maybe called
13 a handyman, how was he paid at that time?

14 A He was paid by check.

15 Q Was the check in his name?

16 A It should be in his name.

17 MR. VALLETTI: For the period that
18 Nestor Almonte worked at 437 Morris Park as
19 a handyman I will make a demand for any pay
20 stubs and checks that were in his name.

21 MR. WEINBERGER: Please put
22 everything in writing.

23 MR. VALLETTI: I will.

24 Q The two to three-week period that
25 he was there as a handyman, at what point did he

1 C. Klahr

2 officially become the superintendent?

3 A I would have to find out when the
4 outgoing person vacated. When he moved into the
5 the super's apartment that's when he was the
6 super.

7 Q Do you know when he moved into the
8 super's apartment?

9 A I believe it was the end of April,
10 but I would have to check records.

11 Q You mean in 2011, correct?

12 A Yes.

13 Q Where in 437 Morris Park did he
14 move into?

15 A We have a superintendent's
16 apartment in the basement of 437 Morris Park.

17 Q Is there anything else in the
18 basement of 437 Morris Park?

19 A Yes.

20 Q What is there?

21 A There is an office, some offices,
22 like a group of three offices.

23 Q One group of three offices. What
24 were they for?

25 A There are three habitable parts to

1 C. Klahr

2 the basement besides the rough areas, the super's
3 apartment, the offices, and then there was
4 another vacant apartment that was used for
5 storage.

6 Q The office that was in 437 Morris
7 Park's basement, was that your office?

8 A Recently it became my office. It
9 used to be Aguila's office.

10 Q When did that become your office?

11 A I would have to estimate last 2012.

12 Q Before late 2012 that office was
13 used by Aguila?

14 A Yes.

15 Q What was that office used for?

16 A Social Service staff.

17 Q Before 2012 did you have another
18 office elsewhere?

19 A Yes, upstairs in the lobby for a
20 short time.

21 Q When was the first time that you
22 had an office in 437 Morris Park?

23 A I would say it was approximately
24 six to eight months prior to when I moved down,
25 but I don't know the dates.

1 C. Klahr

2 Q We can put it as possibly the
3 spring of 2012 or a little earlier?

4 A Whatever. We will say that was
5 late 2012, that was early 2012. I have to find
6 out somehow.

7 Q The office in the basement, was
8 there anything written on the door of that
9 office?

10 A No.

11 Q Could you please describe the
12 distance away from the office the super's
13 apartment in the basement is?

14 A The exterior entry doors are
15 approximately 25 feet apart from each other.

16 Q The entrance to the basement
17 apartment where the super lived was 25 feet away
18 from the office?

19 A The office, however, has two doors,
20 one on the exterior and one inside facing the
21 rough area of the basement.

22 Q Was there anything separating the
23 basement apartment from the door of the office?

24 A Yes, there is a yard.

25 Q What do you mean by a yard?

1 C. Klahr

2 A The building has three sections.
3 Imagine three towers. The superintendent's
4 apartment is in the basement of one tower. The
5 office would be the basement of middle tower and
6 the other vacant apartment that was a storage
7 area was in the last tower.

8 On the outside there is a yard.
9 All that separated us was this yard that was
10 approximately a 12 or 15-foot yard. The doors
11 are not near each other, they are in the center
12 of each of them, so they are 25 feet apart.

13 Q Nestor Almonte took possession of
14 the basement apartment in 437 Morris Park at or
15 around April of 2007, correct?

16 A I believe so.

17 Q Did he move in with anyone?

18 A Yes.

19 Q Who did he move in with?

20 A He moved in with his family.

21 Q He moved in there with his wife and
22 his son and his daughter?

23 A I am not familiar with the
24 occupants.

25 Q When he moved in in April of 2011

1 C. Klahr

2 you had an office at least in the lobby of 437
3 Morris Park beginning in early 2012. Did you
4 ever become familiar with his family at all?

5 A There is a lot of people coming and
6 going out of his apartment. Yes, I know now who
7 is wife is and who is son is. I didn't know.

8 It is not like he introduced them
9 to me when he moved in. You have a building with
10 several hundred people coming and going and we
11 didn't -- they do not access their apartment
12 through the lobby. They have a dedicated
13 entrance through the exterior of the building in
14 the rear of the building, all outdoors.

15 They don't utilize the lobby except
16 if they want to retrieve the mail from the
17 mailbox. That's the only time they go to the
18 lobby. I don't know who is who. I have been
19 puzzled many times exactly who is who in that
20 apartment.

21 Q When you say you have been puzzled
22 many times, what do you mean by that?

23 A There were many people there.

24 Q How many people were there?

25 A A lot more than the three you

1 C. Klahr

2 mentioned.

3 Q Are you saying that he lived there
4 with more than three people?

5 A A lot of people coming and going.
6 I don't know who was sleeping there, but there
7 was a lot more people coming and going on an
8 ongoing basis than just Mr. and Mrs. and one son
9 or one daughter.

10 Q You are the manager of the
11 building, right?

12 A Yes.

13 Q Your super has an apartment 25 feet
14 away from you; correct?

15 A Yes.

16 Q You are not familiar with who
17 really lives in that basement apartment?

18 A That is correct. He has a private
19 life and I don't mingle in his private life. The
20 nature of our building is there are a lot of
21 people coming and going all the time.

22 Q Did you ever see Nestor Almonte get
23 his mail?

24 A Ever, yes. Probably less than five
25 times.

1 C. Klahr

2 Q Did you ever see his wife get the
3 mail?

4 A No.

5 Q Did you ever see his daughter get
6 the mail?

7 A No.

8 Q Did you ever see his son get the
9 mail?

10 A Yes, only after they moved out of
11 the apartment. After he moved out, that's when I
12 noticed his son coming to get the mail.

13 Q The first time you noticed his son
14 was after --

15 A Picking up the mail.

16 Q When was the first time that you
17 saw his son not picking up the mail?

18 A He had shown me who his son was
19 after a short while that he worked there.

20 Q May of 2011, April of 2011, when
21 was it?

22 A I don't recall.

23 Q It could have been between April
24 and May of -- in 2011 he took the job?

25 A Yes.

1 C. Klahr

2 Q May or June of 2011?

3 A Yes, May or June.

4 Q Did you ever speak to his son at
5 that time?

6 A Just hello and greeting and
7 probably the handful of times I have met him in
8 the next two years, just a nod of the head, no.

9 Q The hello and the greeting was
10 sometime in May of 2011?

11 MR. WEINBERGER: Objection. He
12 didn't say that.

13 A The introduction that he introduced
14 me, at that time and beyond that there would just
15 be an occasional glimpse of him or seeing him and
16 there would just be a nodding of the head
17 greeting.

18 Q Nestor Almonte took the job as a
19 superintendent in April of 2011. What are the
20 responsibilities of a superintendent?

21 A The superintendent is responsible
22 to make sure that all of the work that he was
23 given is done, is repaired correctly.

24 Correctly means that the workers
25 that he has doing it, the handymen, should have

1 C. Klahr

2 finished the work. He has to acknowledge that
3 they finished the repairs and didn't just start
4 the repair and it is not complete, that they did
5 a satisfactory job so that we don't have to come
6 back and fix it again.

7 He is responsible to maintain those
8 employees hours and he also submits their time
9 sheets once per week for payroll processing. Let
10 me think for a moment.

11 MR. VALLETTI: Sure.

12 A Beyond managing the workers that I
13 described he has to -- he is the go-to person
14 for anything going on in the building, any kind
15 of complaints.

16 He will be familiar with the
17 operation of the boiler which supplies heat and
18 hot water in the building and the elevator in the
19 building. The cleaning of the building, which
20 was done by the porter, he is also responsible to
21 see that is done.

22 He would also be responsible if we
23 had any outside company come in to do repairs,
24 whether it is a welding company to do some kind
25 of welding or a door repair, gate repair, or

1 C. Klahr

2 anything like that, he is responsible to make
3 sure that they do what they were ordered to do as
4 well as any deliveries of materials that come to
5 the building. He has to oversee that delivery
6 and sign for it and make sure it is as was
7 ordered.

8 MR. WEINBERGER: Off the record,
9 please.

10 [Whereupon, a discussion was held
11 off the record.]

12 MR. VALLETTI: Let's take a quick
13 break.

14 [Whereupon, after a short recess
15 was taken, the following was had:]

16 CONTINUED EXAMINATION

17 BY MR. VALLETTI:

18 Q When you say that the super's
19 responsibility is to make sure that the work
20 given was done right, did you give the
21 superintendent that work at 437 Morris Park?

22 A Yes.

23 Q You were giving Nestor Almonte his
24 orders?

25 A Yes.

1 C. Klahr

2 Q How would you do that typically?

3 A Print the work order.

4 Q Would you print the work order or
5 would they come printed or something else?

6 A I gave him a printed work order.
7 If you want to know who created it, in the time
8 that Aguila was operating the Social Service end
9 they created it. Prior to that I created it.

10 Q When did you start creating the
11 work orders?

12 A Probably in 2005 I created work
13 orders until probably -- I don't know when
14 Aguila started, let's say 2008, maybe. Maybe
15 2007, whenever Aguila took over the Social
16 Service agency they were tasked with going
17 through the apartments and creating a repairs
18 list, so they took over that part from me.

19 Q In 2007 or 2008 Aguila began?

20 A I don't remember the dates. It was
21 six years ago.

22 Q So six years Aguila ago took over
23 creating the work orders they gave it to you?

24 A Yes.

25 Q You gave it to 437 Morris Park, you

1 C. Klahr

2 gave it to Nestor Almonte?

3 A Yes.

4 Q Then Nestor Almonte, what did he do
5 with that work order?

6 A Between him and his helpers he
7 completed those repairs. I would ask for them
8 back the following week. This is a weekly work
9 order.

10 Q Did you get them back in the same
11 form or with notations?

12 A I would get what I call completed
13 work orders, which means that the superintendent
14 was instructed to write the completion date by
15 each apartment, so for arguments sake if there
16 are 15 apartments on the list I want to know when
17 the apartment was completed.

18 Also, the superintendent was
19 instructed to record the name of the person
20 working in that apartment for various reasons
21 including that there are sometimes,
22 unfortunately, acquisitions of theft and whatnot
23 by the employees and that would relieve the super
24 of that responsibility because he has keys to the
25 apartment that he was always the first to be

1 C. Klahr

2 accused. The super is very happy to have
3 somebody else's name there because he was not in
4 that apartment.

5 Q Do you give the work order to him
6 incomplete and he completes it and writes the
7 names. How does he get it back to you, does he
8 hand it to you physically or fax it to you or
9 something else?

10 A At 437 Morris Park generally he
11 hands them to me. That would be the rule, in
12 person.

13 Q Is that in the office?

14 A In my office.

15 Q What do you do with a work order
16 that is completed after you receive it back?

17 A I have to inform Aguila that all of
18 these were completed by this one date and note
19 anything that was not completed and the schedule
20 of when to answer completion.

21 Q Did you do anything with the names
22 that were annexed to the completed work order
23 list?

24 A I didn't do anything with them. I
25 saved them. I saved that actual sheet submitted

1 C. Klahr

2 by the superintendent and I maintained that file
3 necessary to hold onto.

4 Q After you were done informing
5 Aguila of what was completed and not anything
6 that was not what did you do with the physical
7 paper?

8 A I have a file drawer and I filed it
9 away.

10 Q This required you to basically go
11 line by line through these and report which ones
12 were completed and which ones were not?

13 A I was doing that for a time.
14 Eventually we were able to just say what was not
15 done and they worked with that arrangement, but
16 for a year or two I was literally reporting line
17 by line.

18 Q Do you recall which years you were
19 reporting line by line, was that 2010, 2011,
20 something else, do you remember the period?

21 A That would be when Aguila first
22 took over, the first year or so, year or two.

23 Q Was this the process that was the
24 same for basically every building, the super
25 would receive the work order incomplete and

1 C. Klahr

2 return it to you completed?

3 A In my buildings that I supervised,
4 yes.

5 Q The same practice applied to 1195
6 Sherman?

7 A Yes. I am not sure what you mean
8 by that. In other words, yes, I would send the
9 work order and get it back.

10 Q You would send it to who, it was
11 the super?

12 A At 1195 Sherman when there was a
13 super the super got it. When there was no super
14 it was Lopez that got it.

15 Q You instructed him to do the same
16 thing with the work orders for 1195 Sherman that
17 he was doing for 437 Morris Park?

18 A Meaning I would get back a
19 completed work order. He didn't do it. He had
20 to make sure that the worker did it.

21 Q He would receive the work order for
22 1195 Sherman and give that work out to the
23 handyman or the porter or whoever was at 1195
24 Sherman?

25 A Yes.

1 C. Klahr

2 Q When did you start giving him the
3 work orders for 1195 Sherman?

4 A Sometime in 2013 when we started
5 having a problem with the super over there.

6 Q Lopez didn't work in 1195 Sherman
7 prior to 2013?

8 A He may have gone occasionally.

9 Q Can you give a frequency as to how
10 often he was at 1195 Sherman?

11 A It would be on his time sheet, I
12 don't know.

13 Q During that time that he was still
14 the super at 437 Morris Park?

15 A Yes.

16 Q While he was the super he would
17 also report to 1195 Sherman, receive your work
18 orders and ensure that those were completed?

19 A I don't know what you mean by
20 report. He would oversee the handyman that was
21 doing the repairs there.

22 Q Did he do work himself?

23 A On occasion he had to do it
24 himself. When I say on occasion, it is because
25 there are handymen, people who are supposed to be

1 C. Klahr

2 handled by somebody. If it wasn't, then for some
3 reason he would do it. We had the personnel that
4 he oversaw.

5 MR. VALLETTI: Please read that
6 back.

7 [Whereupon, the requested portion
8 of the record was hereby read by the
9 reporter.]

10 Q When you say that the people were
11 supposed to be handled by someone, what do you
12 mean by that?

13 A Let me correct that.

14 MR. VALLETTI: I am a little
15 confused.

16 A Okay. There are people. I mean as
17 employees, handymen, that are supposed to handle
18 that work. They are supposed to handle -- we
19 will designate people there to handle all of the
20 work. He was supposed to allocate a person to do
21 that job.

22 If it was neglected for some reason
23 it became his and if it was something urgent he
24 may have to go down there and do it himself,
25 which happened on occasion.

1 C. Klahr

2 Q He was ultimately responsible for
3 the work at 1195 Sherman when it wasn't
4 completed?

5 A When there was no super, correct.
6 Also, the building at 1195 Sherman is a very low
7 maintenance building. Even when we did have a
8 superintendent that super also moonlighted as a
9 handyman for us at other locations.

10 He was very familiar with the
11 staffing and whatnot. In other words, there was
12 not enough work at 1195 Sherman to support
13 somebody full-time, there was just nothing to do
14 there. It is a new building. It is a gut rehab
15 building, very little maintenance there besides
16 clogged toilets. No real repairs.

17 When we had a super there he would
18 be paid to work somewhere else, many times in 437
19 Morris Park.

20 Q The super at 1195 Sherman will also
21 work at 437 Morris Park?

22 A Yes, and other locations. Maybe a
23 lot at 437 Morris Park.

24 Q Why would they work a lot at 437
25 Morris Park?

1 C. Klahr

2 A Every super likes certain kind of
3 people. They like the way a certain guy works.
4 He liked him.

5 Q When there was a super at 1195
6 Sherman would he do work at 437 Morris Park while
7 Lopez was the super there?

8 A Yes, that's what I was trying to
9 bring out, yes.

10 Q You handle the payroll for 437
11 Morris Park, correct?

12 A I distributed the payroll.

13 Q When you say you distributed the
14 payroll, what do you mean?

15 A I gave out the checks on Friday.
16 The payroll is handled by an office that
17 generates the payroll that sends it to the
18 payroll company which I review for accuracy and
19 then give out the checks.

20 Q When you say you review for
21 accuracy, what do you mean by that?

22 A I have to make sure that the
23 clerical workers that entered the payroll entered
24 everything properly, so I would get a copy of the
25 time sheets that they got with some kind of

1 C. Klahr

2 spread sheet, blah blah blah, and make sure that
3 they entered it properly.

4 Q What is blah, blah, blah?

5 A I have to match the spread sheet to
6 the handwritten time sheet and see that they --
7 it is a lot of paperwork.

8 Q The spread sheet is created by
9 whom?

10 A Clerical office workers.

11 Q For 437 Morris Park?

12 A Yes.

13 Q Are they located in the office?

14 A No.

15 Q Where are those located?

16 A New Jersey.

17 Q Does 437 Morris Park have an office
18 in New Jersey?

19 A No. The management company -- I
20 am not familiar how it works. The way I
21 understand is they use a service, so this is some
22 company that that's what they do. They do either
23 payroll or they do different office work. They
24 do office work.

25 Q Then you said you had to compare

1 C. Klahr

2 handwritten sheets. Are you talking about time
3 sheets?

4 A Yes. I didn't get the time sheets
5 directly. The super faxed them to the payroll
6 company, but it was these clerical workers who
7 prepared it for the payroll company.

8 After they completed it it would be
9 E-mailed to me for me to look at. I actually
10 occasionally would retrieve from the
11 superintendent the original signed time sheets
12 because what they were submitting were faxes.

13 Q They would receive the fax and then
14 you would get the original from the supers?

15 A To get the paycheck, to generate
16 the payroll the superintendent would fax it in.
17 I don't necessarily see that. It is prepared for
18 payroll processing. When it is sent to the
19 payroll company I am cc'd on that and I look at
20 it and review it.

21 At a later time once a month or
22 something like that I would call the super and
23 say to give me the original time sheets, because
24 he was instructed to keep them until I got there.

25 Q You instructed the super to hold

1 C. Klahr

2 onto all of the time sheets after he faxed them
3 to you so you could collect them once a month?

4 A Yes.

5 Q You said that the super's
6 responsibility, Lopez' responsibility, was to
7 maintain employee hours. Can you explain what
8 you meant by that?

9 A He had to make sure that the person
10 recorded the time sheets properly. He was
11 instructed in that by me personally how that
12 works.

13 He is familiar with exactly what
14 has to be done so that the payroll company can
15 read it and he also has to sign it. He has to
16 sign the comings and goings of those employees
17 under him, which he may have in any given week
18 between four and six employees.

19 We are talking about Nestor Almonte
20 as opposed to the other supers, he had between
21 four and six workers in his building.

22 Q What were the names of the workers?

23 A I would have to submit to you a
24 list. It is not something that I know by heart.
25 They are on the payroll. It is not something

1 C. Klahr

2 that I know by heart. I can give you several
3 names, but there are many, many more.

4 They are not always the same
5 workers. These are roving people. One exception
6 was the super at 1195 Sherman who was Mr. Munoz,
7 he always liked to work at 1195 Sherman. That
8 was his choice place.

9 Other workers that were there, if
10 there were another three that week there were
11 people that were all over the place, one day here
12 and one day there on an as-needed basis.

13 You asked about the instructions of
14 the time sheets. He had to make sure that they
15 recorded their hours properly. He is supposed to
16 sign to that and he has to get permission, if
17 they would stay overtime past 5:00 then he would
18 have to call me and ask me permission.

19 Q These were weekly time sheets; is
20 that correct?

21 A These were weekly time sheets, yes.

22 Q Lopez signed weekly time sheets for
23 his employees at 437 Morris Park?

24 A We can show you a time sheet. The
25 employee would sign on the bottom at the end of

1 C. Klahr

2 the week that it was complete and final, but
3 Lopez would have to sign twice a day, coming and
4 going, entering and leaving, maybe several times
5 a day if they went out to lunch. He is supposed
6 to sign and make -- he was instructed to make
7 eye contact with the employee and record the time
8 that he is making that eye contact.

9 Q Is there any particular reason why
10 you would instruct him to make eye contact with
11 an employee?

12 A Yes.

13 Q Please explain.

14 A We have had prior experience where
15 somebody would say we are looking for an employee
16 because we don't see him and we went to an
17 apartment that he was working for and he went to
18 lunch. It is after lunch and we didn't see him.

19 When we called him he said he was
20 there in the apartment. There was a gap of half
21 an hour or two hours that the guy was lost and he
22 is claiming that he came at an earlier time. We
23 instituted that the superintendent has to see
24 him.

25 Q He has to see the employee before

1 C. Klahr

2 he signs the time sheet?

3 A He has to see him.

4 Q As the witness to the work that was
5 done he had to see that employee?

6 A No. To witness that this employee
7 came to work. That's a different story about
8 work being done. The employee came and it is
9 like being clocked in. He has to personally
10 witness that this person arrived when he is
11 claiming to have arrived and left when he is
12 claiming to have left.

13 Q Was there a punch in or punch out
14 system at 437 Morris Park?

15 A This was our system.

16 Q There was no machine that you used
17 for a punch card?

18 A Not for us. Aguila has one. It
19 had nothing to do with us. Not for us. Is there
20 one, yes, but it is not ours.

21 Q Your employees were instructed to
22 maintain all of their time by handwriting?

23 A Yes.

24 Q For your employees there was no
25 hand scan or punch card?

1 C. Klahr

2 A No machines of any kind.

3 Q At 437 Morris Park that's the same
4 as at 1195 Sherman, no punch card system for your
5 employees, nothing of that nature?

6 A Correct.

7 Q What about at 1101 Manor, any
8 machine for that purpose?

9 A No.

10 Q 1056 Boynton?

11 A No.

12 Q Was this the procedure that was in
13 place starting in 2011, referring to the time
14 when Lopez took the job as the superintendent at
15 437 Morris Park?

16 A I believe so.

17 Q Was that the same procedure at the
18 time until he ended his employment, whenever that
19 occurred?

20 A Yes.

21 Q Were there any other sheets that he
22 was responsible for maintaining other than the
23 work orders and the time sheets?

24 A What kind of other sheets?

25 Q Are there any other sheets besides

1 C. Klahr

2 the work orders and time sheets, any other sheets
3 that list job directives or company payroll or
4 something that he was personally responsible for?

5 MR. WEINBERGER: Objection to the
6 form.

7 A I don't believe so. His own time
8 sheet is included in that thing. I don't believe
9 there is any other paperwork, but I may be
10 mistaken.

11 Q How many time sheets are there?

12 A Every type of employee has their
13 own type of time sheet. Off the top of my head
14 there is a superintendent's time sheet,
15 handyman's time sheet, a porter's time sheet.

16 Q There are three different types of
17 time sheets?

18 A At least. The superintendent also
19 has an additional time sheet which we instituted
20 at some later more recent time which they may
21 have used the roving handyman.

22 Q Roving employees were the
23 handymen's time sheets?

24 A Yes.

25 Q Would a superintendent fill out

1 C. Klahr

2 just the superintendent time sheet or could he
3 also fill out a roving employee time sheet if he
4 needed?

5 A He could fill out a roving time
6 sheet as well.

7 Q Why would he fill out a roving time
8 sheet as opposed to a superintendent's time
9 sheet?

10 A If he worked outside of the
11 designated property that he lived at. That was
12 created because on the bottom of the super's time
13 sheet there was an area that I had reserved for a
14 specific purpose called leaving the building and
15 they would start writing things in there because
16 they wanted to record their time.

17 I just instructed them not to do
18 that, to start using a handyman time sheet to
19 record anything that -- any work time that they
20 are leaving the premises area.

21 Q Was that a confusing part such that
22 you had to change the protocol to let them fill
23 in roving employee time sheet?

24 A The payroll company pointed it out.
25 For their clerical people, it was confusing to

1 C. Klahr

2 them, I don't know.

3 Q When did you institute the new
4 policy that no more work on the leaving the
5 premises section, just to fill out the separate
6 roving employee time sheet?

7 A I don't know. You have to look
8 when it started.

9 Q I am just asking from your
10 recollection. When is the first time you
11 remember telling Lopez this is no longer to be
12 used to record his time?

13 A I don't recall.

14 Q Was it in 2013?

15 A It is possible.

16 Q Was it in 2012?

17 A I don't know.

18 Q When did the clerical worker
19 approach you with a problem?

20 A I don't recall. The same time.

21 Q A super could fill out a
22 superintendent's time sheet and a roving employee
23 time sheet?

24 A The incident was that the clerical
25 worker missed the hours that one of the supers

1 C. Klahr

2 put down and we tell the super not to do that,
3 they are not looking there, they are causing
4 their own grief, if they didn't get paid or
5 whatever it is, not to put it over there.

6 Q The incident that caused you to
7 change that was somebody's failure to get paid
8 for hours that they had written down?

9 A It was a correction that had to be
10 made. Corrections could happen. An adjustment,
11 an adjustment to the pay could have been made.

12 Q Who determined how much an employee
13 at 437 Morris Park was going to get paid?

14 MR. WEINBERGER: Objection to
15 form. You can answer it if you can.

16 A What do you mean?

17 Q Who decided how much a porter was
18 going to get paid for the job that they were
19 doing?

20 A When I started working for the
21 company I inherited a policy of whatever it was
22 and I just maintained it.

23 Q It was you who decided to pay the
24 porter how much they were getting paid?

25 A I continued it.

1 C. Klahr

2 Q The same goes for the handymen?

3 A I made the decision based on what
4 they wanted to get paid and what I was able to
5 afford to pay and we would hammer out an
6 agreement.

7 Q Were you given a budget?

8 A No, I was not given a budget, but
9 some of the workers have tremendously varying
10 differences in what they want to get paid.

11 Q What did you use to determine how
12 much someone was going to get paid?

13 A I knew from -- I know what is in
14 the ballpark of what we have gotten in the past,
15 what is available. I know what is available. It
16 would have to be reasonable to that area.

17 Q Did you use the person's experience
18 to determine their pay rate?

19 A Yes.

20 Q Did you use the fact that they had
21 worked for the company before --

22 A No.

23 Q Did you have repeat employees, ones
24 who left and came back?

25 A Yes.

1 C. Klahr

2 Q Did that affect how much they were
3 paid?

4 A Generally they just came back
5 because they wanted the work and they got the
6 same rate. Sometimes they left because they were
7 unhappy with the pay and now I am willing to give
8 them a little more.

9 Q For 437 Morris Park you handled the
10 hiring, correct?

11 A Yes.

12 Q Could you explain to me the process
13 of how you hired people to work at 437 Morris
14 Park?

15 A Could you be more specific.

16 Q You get somebody who wants a job.
17 Say they spoke to somebody in the building and
18 they said you have to talk to Charlie and they
19 talk to you. What happens?

20 A They would meet with me. I would
21 give them an application for employment. It
22 basically asks them a couple of generic
23 questions, et cetera, et cetera, whatever is on
24 the form. They would then sign it.

25 It also asked if they were arrested

1 C. Klahr

2 for any reason, which I had to ask due to the
3 nature that we had -- as shelters we had
4 accessibility to the apartments to enter at any
5 time, so we had to be a little sensitive and make
6 sure that there would be proper respect, not
7 somebody barging in on people because they feel
8 that they can do whatever they want.

9 They had to sign that application
10 that whatever was there was truthful and then we
11 would at that point discuss the wages. If we
12 mutually agreed to move forward then this was a
13 set of rules that I would read to them and
14 actually many of these applicants were not
15 English speaking people.

16 Lopez would be my translator and he
17 had to sign that form, that consent form that the
18 perspective employee was now going to become an
19 employee and Lopez would sign as a witness
20 translator so that they don't say later they
21 didn't understand the rules. I would say Lopez
22 did that nine out of ten times.

23 Q If Lopez was not available did you
24 have someone else you could turn to for that?

25 A In the time that Lopez was the

1 C. Klahr

2 superintendent he was the man.

3 Q He was always available?

4 A I would arrange a meeting when he
5 could do it. I would ask him when he was
6 available.

7 Q You didn't have to run the decision
8 to hire any particular employee by anyone else,
9 that was your ability to hire?

10 A Correct.

11 Q Is this how the process went with
12 Lopez?

13 A Meaning?

14 Q When he was first hired did he do
15 this?

16 A Yes, I believe so.

17 Q He filled out an application?

18 A Correct.

19 MR. VALLETTI: I will make a demand
20 for that.

21 MR. WEINBERGER: You have it.

22 MR. VALLETTI: The employment
23 application bearing the name of Nestor
24 Almonte.

25 MR. WEINBERGER: You didn't ask

1 C. Klahr

2 that. You have an application.

3 MR. VALLETTI: Hold on, there is no
4 question pending.

5 MR. WEINBERGER: There is no
6 question pending.

7 MR. VALLETTI: Give me a minute.
8 Let's go off the record.

9 [Whereupon, a discussion was held
10 off the record.]

11 Q Off the record you said that you
12 had wanted to wipe out everything that you just
13 said. Why is that?

14 A In the beginning of this proceeding
15 you had said clearly that all references to
16 Nestor Almonte is Lopez, okay?

17 All references I made are to this
18 face, regardless of the name that he goes by.
19 When we talk about an application for employment,
20 this person filled out an application.

21 Q Who is that person?

22 A Lopez. You said you are calling
23 him Nestor.

24 Q It is Nestor Almonte Lopez. It
25 doesn't make the difference to me because that's

1 C. Klahr

2 his name, that's what he goes by?

3 A Lopez filled out an application and
4 that is the application that we are talking
5 about, which was the beginning of his employment.

6 Q When was the beginning of his
7 employment?

8 A February of 2011.

9 Q He filled out an application in
10 2011?

11 A Yes.

12 Q What name did he use on that
13 application?

14 A Manuel Almonte.

15 Q Why?

16 A That's his name.

17 Q His name is Nestor Almonte, is it
18 not?

19 A That became evident in -- way after
20 working maybe a year and-a-half or two years
21 after working. That was not his name.

22 Q What was not his name?

23 A His name is Lopez. He is called
24 Lopez. His name is Manuel Almonte.

25 Q Why was he called Lopez if his name

1 C. Klahr

2 was Manuel Almonte?

3 A I would like to allude to the
4 testimony he gave and said several times. He
5 maintained that story from day one. I asked him
6 that question. He said to me that's his mother's
7 family name. I believe it is on some documents,
8 too.

9 Q What was his mother's family name?

10 A Lopez.

11 Q What was his first name?

12 A Whatever he wrote on the
13 application, I believe Manuel.

14 Q Nestor Almonte used Manuel Almonte?

15 A No, Lopez. I don't know what
16 Nestor Lopez you are talking about.

17 Q You said you don't know who I am
18 talking about when I say Nestor?

19 A After the course of his employment
20 of quite many months or maybe more than a year or
21 so he came up with a new name.

22 Q What do you mean he came up with a
23 new name?

24 A Exactly what I said.

25 MR. VALLETTI: I will mark this.

1 C. Klahr

2 [Whereupon, the document was
3 hereby marked as Plaintiff's Exhibit 1 for
4 identification, as of this date, by the
5 reporter.]

6 Q I will show you what was marked as
7 Plaintiff's Exhibit 1 for your deposition. I
8 will show it to you and your attorney. What is
9 that document?

10 A This is known as a warning notice
11 that would be generated if an employee would be
12 doing something that needed reprimanding, which
13 in case of somebody who doesn't speak English
14 fluently, it would be done in front of a witness.

15 Q It is a warning notice?

16 A Yes.

17 Q What is the company on top?

18 A Sherman Management Company, also
19 known as 1195 Sherman.

20 Q What does the body of that say on
21 the bottom?

22 A "Nestor Almonte witnessed this
23 topic being discussed in person with Albert."

24 Q Who is Nestor Almonte?

25 A We know who he is at this time.

1 C. Klahr

2 Q At what time did you become aware
3 of who he was?

4 A I told you for many months or a
5 year and-a-half or so after his employment.

6 MR. VALLETTI: Please mark this as
7 Plaintiff's Exhibit 2.

8 [Whereupon, the document was
9 hereby marked as Plaintiff's Exhibit 2 for
10 identification, as of this date, by the
11 reporter.]

12 Q I will show you Plaintiff's
13 Exhibit 2, April 20th work orders that go back in
14 time.

15 MR. WEINBERGER: Bates numbers 317
16 to 327.

17 Q Take a look through it and see if
18 you are familiar with that document.

19 A Yes.

20 Q What do you know that document or
21 those several documents to be?

22 A This is a completed work order.

23 Q In the right-hand margin of this
24 document the name Lopez appears several times?

25 A Yes.

1 C. Klahr

2 Q Who do you know Lopez to be?

3 A I know Lopez to be the face of the
4 super.

5 Q The face of the super?

6 A I don't know how to refer to him.

7 Q Did you know his first name at this
8 time?

9 A He was always called Lopez.

10 Q You said before he filled out and
11 employment application?

12 A Yes.

13 Q What name did he use?

14 A Manuel Almonte.

15 Q Up until whatever time later you
16 sound you found out --

17 A He was always called Lopez until
18 today.

19 Q You are the manager of the
20 building, correct?

21 A Yes.

22 Q You don't know your employee's
23 names?

24 A Yes, I do.

25 Q His name was only Lopez, he didn't

1 C. Klahr

2 have a first name?

3 A I have many employees, and this is
4 customary, where everybody has a name. His name
5 is Tony, but that's not the name on his check.
6 Everybody has a name, sorry to tell you.

7 Q You don't know the names that are
8 on the checks of the employees?

9 A Yes, I do.

10 Q The names on the checks of your
11 employees don't match up with the people that
12 they actually are?

13 MR. WEINBERGER: Objection.

14 A They don't match the nickname that
15 they are called. This is Buddy or this is Lopez
16 or this is Tony. That's not the name on the
17 check.

18 Q You pay people on names that you
19 don't know?

20 A I do know their names.

21 Q What is his name?

22 A Manuel Almonte.

23 Q You never had a first name from
24 him?

25 A Manuel Almonte also known as Lopez.

1 C. Klahr

2 Q What about on this document, Nestor
3 Lopez, who is that?

4 A At a later time he disclosed this
5 whole thing with the name change.

6 Q Earlier you testified that you got
7 work orders from Aguila, correct?

8 A Yes.

9 Q You gave those work orders out?

10 A Yes.

11 Q You specifically gave work orders
12 to Lopez?

13 A Yes.

14 Q You specifically gave work orders
15 to Lopez when he first started his employment,
16 correct?

17 A When he became the super. Prior to
18 the time he was a super, no.

19 MR. VALLETTI: Please mark these as
20 Plaintiff's Exhibits 3 and 4.

21 [Whereupon, the documents were
22 hereby marked as Plaintiff's Exhibits 3 and
23 4 for identification, as of this date, by
24 the reporter.]

25 Q I will show you what was marked as

1 C. Klahr

2 Plaintiff's Exhibit 4. What is that document?

3 A A forwarding notice.

4 Q Did you write that document?

5 A I hand wrote it, yes.

6 Q Is this your signature here?

7 A Yes.

8 Q Whose signature is that down there?

9 A Lopez' signature.

10 Q I will show you what was marked as

11 Plaintiff's Exhibit 3. What is this?

12 A A work order, completed work order.

13 Q What is the date?

14 A April 27, 2011.

15 Q What name is written up here?

16 A Nestor Lopez.

17 Q That's your handwriting, isn't it?

18 A Yes, it is.

19 Q On a document from April of 2011

20 you wrote Nestor Lopez received?

21 A I wrote it at a different time.

22 Q When did you write it?

23 A I explained that I filed these work

24 orders and I keep them. When I had to review

25 something at the end of the year I make a lot of

1 C. Klahr

2 notes.

3 Q I believe your testimony was you
4 would collect them at the end of the month. Can
5 you tell me whose name appears on the margin
6 here?

7 A Nestor.

8 Q That's from April of 2011?

9 A Yes.

10 MR. WEINBERGER: Could I see that,
11 please.

12 MR. VALLETTI: Sure (handing.)

13 Q In April of 2011 you knew his name
14 was Nestor Lopez?

15 A What I knew is that his name is
16 Lopez.

17 Q Here it is written that you had a
18 Nestor in the margin, correct?

19 A Yes.

20 Q You testified that you received
21 these completed work orders, correct?

22 A I need to clarify that it is not
23 somebody else, but maybe it is him.

24 Q Maybe it is him working in April of
25 2011, it is Nestor Lopez?

1 C. Klahr

2 A The super usually writes super or
3 something. The procedure was to write super.
4 He was not the super at that time. It is a
5 little --

6 Q Does that say "now super" on the
7 top?

8 A Yes, "new super."

9 Q "New super Nestor Lopez received"?

10 A Yes. We review --

11 MR. VALLETTI: There is no question
12 pending. Please mark this as Plaintiff's
13 Exhibit 5.

14 [Whereupon, the document was
15 hereby marked as Plaintiff's Exhibit 5 for
16 identification, as of this date, by the
17 reporter.]

18 Q Are there any other work orders
19 that bear Nestor Lopez' name from 2011?

20 A I am not sure. It is common for me
21 to make notes. I make notes occasionally on the
22 top or sides of the page. As a matter of fact, I
23 always write notes. They are cut off.

24 Q That one says "new super"?

25 A Yes.

1 C. Klahr

2 Q Again, you reviewed these work
3 orders; is that correct?

4 A Yes.

5 Q You testified that at some point
6 you were reviewing them line by line, correct?

7 A Yes, not necessarily in that year,
8 but go ahead.

9 Q I will show you what was marked as
10 Plaintiff's Exhibit 5. Take a look at that.

11 A Okay.

12 Q Do you recognize this document?

13 A It is a work order, completed work
14 order.

15 Q Where is that from?

16 A 437 Morris Park, August 10, 2011.

17 Q At this point there is a name that
18 appears as the super?

19 A The name super appears.

20 Q Who was that at that time?

21 A Lopez.

22 Q Is he Nestor Lopez at this point?

23 A It is the father that we were
24 referring to. There is only one super, the
25 super.

1 C. Klahr

2 Q If he is writing his name in as the
3 super why on the same work order does he also
4 write Manuel?

5 A Maybe somebody named Manuel did the
6 work.

7 Q Do you have any other employees
8 named Manuel?

9 A I don't know.

10 MR. WEINBERGER: What exhibit is
11 that?

12 MR. VALLETTI: It is Plaintiff's
13 Exhibit 5.

14 Q Did Manuel Almonte complete that
15 work?

16 A I don't know. I would like to
17 clarify I don't know who Louis is either, I don't
18 know these names.

19 Q But you wrote in your own
20 handwriting Nestor Lopez at the top; is that
21 correct?

22 A Yes. It appears here again.

23 MR. VALLETTI: There is no question
24 pending. Move to strike. Off the record.

25 [Whereupon, a discussion was held

1 C. Klahr

2 off the record.]

3 Q Going back to Plaintiff's Exhibit
4 3, it said Lopez was hired to be the super at 437
5 Morris Park in about April of 2011, correct?

6 A Yes.

7 Q Is that when he would be the new
8 super?

9 A It looks like it.

10 Q He would not be the new super two
11 years later?

12 A No. This appears to be that this
13 is when he became the super if that's what you
14 are asking.

15 Q Earlier you testified that the
16 super's responsibility, he was the go-to person
17 for any complaints. Can you elaborate on what
18 you meant by complaints?

19 A If anybody in the building,
20 residents, occupants, shelter clients, would have
21 a complaint they would tell him and he was
22 instructed to tell them to report to the office
23 as every job needs to come through a work order
24 unless there was an active emergency such as a
25 big leak with water flowing or the Fire

1 C. Klahr

2 Department entering the building.

3 Q What was the regular schedule of
4 437 Morris Park's super?

5 A The super's schedule --

6 Q Let's start with 2011 because it
7 might have changed later. In 2011 what was the
8 super's schedule, Lopez' schedule at 437 Morris
9 Park?

10 A Generally the super would work
11 approximately 8:30 to 5:00 with a half hour break
12 in the middle. As you mentioned, it later
13 changed to 7:30 a.m. to start.

14 Q When, approximately, did that
15 change occur?

16 A I don't recall, but it might have
17 been in 2013.

18 Q The half an hour break, that was
19 unpaid?

20 A Correct.

21 Q Lopez, did he answer emergency
22 calls at night?

23 A Yes.

24 Q How would he find out about those
25 calls?

1 C. Klahr

2 A I would text him.

3 Q What did you text him on, his
4 personal phone or the company phone?

5 A Company phone.

6 Q Was that your normal method of
7 communication with him generally?

8 A At night.

9 Q What about during the day, did you
10 maintain contact with him throughout the day?

11 A Yes. We had a combination two-way
12 radio cell phone. You can talk on radio or call
13 him.

14 Q Is that sort of like a Nextel?

15 A Yes. It changed, so I don't know
16 how long he had that arrangement. Probably in
17 2012 it became no radio, but I am not sure of the
18 date. Originally there was a radio attached to
19 it. It was a company phone.

20 Q Did any other employees have
21 company phones other than supers?

22 A No.

23 Q No handymen had company phones?

24 A Correct.

25 Q No porters had company phones?

1 C. Klahr

2 A Nobody but the super, the one super
3 in the building.

4 Q You had said before that you would
5 text Lopez at night if you had received an
6 emergency call. Can you explain how you received
7 the emergency calls?

8 A We have what we call a hotline,
9 which basically is an answering service. We
10 post the phone number throughout the building so
11 if somebody has an after hours emergency we can
12 know about it before the building burns down or
13 floods six floors.

14 That answering service E-mails or
15 texts the specific complaint. It could be a very
16 detailed complaint.

17 Q Can you give me an example of what
18 would be a detailed complaint received just from
19 the hotline?

20 A Yes.

21 Q Please.

22 A For this building it would say 437
23 Morris Park, Apartment B, 53, leak coming down
24 from upstairs."

25 Q Do you know how these hotline calls

1 C. Klahr

2 are generated, was it through the City, through a
3 direct line from the residents or something else?

4 A It was one of two ways. The
5 resident themselves can call, we posted signs
6 everywhere asking them to call.

7 Aguila, which maintains 24 hour
8 security, a security supervisor, that supervisor
9 who works off site would get the call from the on
10 site security guard and that person would often
11 call the hotline.

12 Q The Aguila off site supervisor
13 would put in a call into the hotline?

14 A Correct.

15 Q Or a resident can call the hotline
16 correct?

17 A Yes.

18 Q Do you know where the resident
19 calls went?

20 A It goes to the answering service
21 and the answering service would send to to me.

22 Q Did Abraham receive those calls as
23 well?

24 A No.

25 Q Did Kalman send these types of

1 C. Klahr

2 complaints or hotline calls to Lopez?

3 A I believe not.

4 Q You were responsible for that,
5 correct?

6 A Yes.

7 Q It is safe to say that all of those
8 hotline calls went through you before they were
9 given to any of the supers including Lopez?

10 A Correct. That's the way it works.
11 That's the only way it works.

12 Q Let's go on a weekly basis. How
13 often would you get hotline complaints, how often
14 in a week?

15 A Anywhere between three and six. I
16 would like to add something. There were
17 additional calls made by day which were not sent
18 to the super. They sent to Aguila. I would
19 submit it to Aguila.

20 I am talking about only calls to
21 our hotline that went to the super, that's how it
22 worked. A resident would call and say their
23 toilet is overflowing and that's the middle of
24 the day. That call would actually, the E-mail
25 would be forwarded to Aguila to be aware that

1 C. Klahr

2 there is such a call. I would tell the super,
3 but at nighttime, the nighttime calls were not
4 sent to Aguila. It was just me straight to the
5 super.

6 Q The daytime calls, did Aguila give
7 them directly to the super or did they go to you?

8 A If it was a clogged overflowing
9 toilet type of thing I would call the super. The
10 nature of a lot of those calls were not really
11 urgent and, therefore, we left it at that. They
12 would handle it. They would follow up on it and
13 generate a printed work order for a later date,
14 tomorrow, next day, whatever.

15 Q The hotline calls might have been
16 handled immediately or they might have become
17 part of a work order?

18 MR. WEINBERGER: Objection.

19 A I would like to clarify. If it is
20 at nighttime and it is an emergency that I deem
21 an emergency I would send it to the super.

22 If I deemed it was not an emergency
23 like somebody said their light bulbs are not
24 working I would just forward it to Aguila the
25 next day.

1 C. Klahr

2 Not every call is an emergency. It
3 was just a service that we provided for them
4 because though Aguila was responsible to make the
5 work orders the residents would complain to
6 Kalman, they would say they have made a complaint
7 and it was four days and nobody attended to it.
8 We would get ahead of the printed work order some
9 time because it may be an emergency and it may
10 not be.

11 Q Were there instances where
12 something had been completed but still showed up
13 on a work order?

14 A Yes.

15 Q They would have to be filled out?

16 A They would have to write down the
17 date that it was completed even though it was
18 prior completed. Frequently that would happen.
19 If I knew that I would have removed it from the
20 work order.

21 The super would not get that part,
22 I would take it out. It was a very common -- I
23 only got these once a week and the hotlines are
24 every day. It was very common that they were
25 printing stuff that we took care of two days

1 C. Klahr

2 before.

3 Q If the hotline was coming in every
4 day could you describe the frequency of the calls
5 on a daily basis?

6 A It would vary on the weekends. On
7 the weekends you can have two to three calls, not
8 always, but that would be common. During the
9 week you could have maybe two or three out of the
10 whole week, weekends being different.

11 Q Weekend calls were more frequent?

12 A Yes. We have this data, so it was
13 something that we looked at and we know.
14 Sometimes on the weekends you could have two or
15 three calls. If it was a holiday weekend it
16 would be another call or two.

17 During a general work week not
18 including weekends you could have two to three
19 calls. On the weekends additional.

20 Generally it is safe to assume four
21 to six calls a week, sometimes less and just two
22 calls during the weekend and nothing during the
23 week.

24 MR. VALLETTI: I will make a demand
25 for the data that he just said he had.

1 C. Klahr

2 MR. WEINBERGER: No problem.

3 Q Did that come by way of E-mail?

4 A Yes.

5 MR. VALLETTI: I will make a demand
6 for the E-mails from the hotline for the
7 relevant period, for 437 Morris Park and
8 for 1195 Sherman.

9 MR. WEINBERGER: Let's go off the
10 record.

11 [Whereupon, a discussion was held
12 off the record.]

13 Q Mr. Clarke, there is something that
14 you would like to add?

15 A Yes. When that I texted the super,
16 those hotline calls at night, it was at my
17 discretion. They were limited to approximately
18 11:00 to 11:15. Calls may come at other hours,
19 which I didn't forward unless the Fire Department
20 was in the building, which was very uncommon.

21 Q You could send a text to Lopez
22 about a call at 11:00 at night?

23 A Yes.

24 Q You could send that same message up
25 to 11:15 p.m.?

1 C. Klahr

2 A Yes.

3 Q We had some testimony from you
4 before that the face that you knew as Lopez
5 filled out an employment application?

6 A Yes.

7 Q You testified that he used what
8 name on that employment application?

9 A I believe it was Manuel Almonte.

10 MR. VALLETTI: Please mark this as
11 Plaintiff's Exhibit 6.

12 [Whereupon, the document was
13 hereby marked as Plaintiff's Exhibit 6 for
14 identification, as of this date, by the
15 reporter.]

16 Q I will show you Plaintiff's
17 Exhibit 6 for identification. Are you familiar
18 with that document?

19 A Yes, I am.

20 Q What do you know that document to
21 be?

22 A This is an application for
23 employment for Lopez.

24 Q This is your handwriting?

25 A The top half is mine and he signed

1 C. Klahr

2 and dated it on the bottom.

3 Q He didn't fill this out up here?

4 A That is correct. I filled out
5 everything -- he just signed it and dated it
6 (indicating).

7 Q What is the date on this form?

8 A February 21, 2011.

9 Q In April of 2011 where you
10 handwrote that Nestor Lopez is the new super at
11 437 Morris Park did you ask him why he used a
12 different name on his employment application?

13 A No.

14 Q Why not?

15 A First of all, I don't have these
16 papers at the same time in front of me. I am not
17 bothered by somebody who goes by a nickname of
18 one name and gets a check through another
19 version, I am just not.

20 Q When you hire an employee do you
21 ask for any documentation from them?

22 A Now I do.

23 Q You didn't at the time?

24 A At that time we didn't do what we
25 do now.

1 C. Klahr

2 Q What is it that you do now?

3 A We demand lots of documentation,
4 filling out forms, signing forms, providing photo
5 ID, which at that time we didn't have.

6 MR. VALLETTI: Please mark this as
7 Plaintiff's Exhibit 7.

8 [Whereupon, the document was
9 hereby marked as Plaintiff's Exhibit 7 for
10 identification, as of this date, by the
11 reporter.]

12 Q How did you determine what name you
13 would use for Lopez in various documents?

14 A I don't understand the question. I
15 don't determine -- everybody calls him a certain
16 name, that's his name that we refer to him on a
17 regular basis.

18 Q You would only refer to him as
19 Lopez?

20 A Yes.

21 MR. VALLETTI: Please mark this as
22 Plaintiff's Exhibit 8.

23 [Whereupon, the document was
24 hereby marked as Plaintiff's Exhibit 8 for
25 identification, as of this date, by the

1 C. Klahr

2 reporter.]

3 Q I will show you what was marked as
4 Plaintiff's Exhibit 8. You are familiar with
5 this document?

6 A Yes, employee warning.

7 Q Is this your signature here?

8 A Yes, it is.

9 Q Did you write this document?

10 A I typed it.

11 Q Under manager you have listed what
12 name?

13 A Nestor Lopez.

14 Q In this document you refer to him
15 as Nestor Lopez, correct?

16 A Yes.

17 Q The next document, what is this
18 document?

19 A A warning notice.

20 Q This is your signature down here?

21 A Yes.

22 Q You wrote this document?

23 A Yes.

24 Q The manager listed here is what?

25 A Lopez.

1 C. Klahr

2 Q Finally, the same real issue here,
3 it is an employee warning?

4 A Yes.

5 Q You wrote that?

6 A Yes.

7 Q Your signature is on the bottom?

8 A Yes.

9 Q Who is the manager listed?

10 A Lopez, Nestor Lopez.

11 Q In these documents you list him as
12 Nestor Lopez?

13 A Yes.

14 Q In a document like Plaintiff's
15 Exhibit 3 in June of 2012 he is Manuel Almonte.
16 How did you determine what to refer to him as in
17 various documents?

18 A He came to us at some time period
19 and told us that his -- that he needs a loan
20 because he is involved with an immigration lawyer
21 or something and he has to fix his immigration
22 problem, which I don't know about. He has papers
23 and this is the name that he is going to be
24 working under.

25 At that time period he became --

1 C. Klahr

2 he didn't work under Manuel Almonte anymore.

3 Q When did that conversation occur?

4 A There is paperwork and a loan and
5 that would determine the time, 2012, I believe.

6 Q What name appears on the loan?

7 A Manuel Almonte, the ones he always
8 got, the same check that he always got.

9 Q Plaintiff's Exhibit 6, this is
10 again the application for employment, we had you
11 testify that you filled out the top?

12 A Yes.

13 Q What documentation did he present,
14 if any, when he filled out this document?

15 A I don't know that he provided any
16 documentation, but a Social Security card he
17 would have had to have provided in order to get
18 paid.

19 Q Do you remember the Social Security
20 card that he presented?

21 A No. It should be noted by me. I
22 am sure there are notes on it.

23 Q How did you determine personally
24 what you were going to refer to him as in
25 whatever documents we were looking at?

1 C. Klahr

2 A To answer your question you are
3 looking at two different periods where at that
4 time he stopped using that name and he had
5 provided ID and whatnot that he is this name
6 (indicating).

7 Q What ID did he provide?

8 A That's a good question. It has to
9 be in the file. I don't know by heart.

10 Q What would you ask for?

11 A I would ask for a valid photo ID
12 and Social Security card or other work eligible
13 proof from the government.

14 Q Did Nestor Almonte or Lopez ever
15 present to you this?

16 A Yes, he did.

17 Q Is that the face that you know as
18 Lopez?

19 A This is what he presented at the
20 time that he switched documentation.

21 Q Did that occur in December of 2012?

22 A This was provided at that time.
23 This is when this was provided.

24 Q Does your company give loans to
25 employees?

1 C. Klahr

2 A Yes.

3 Q Does your company give loans to
4 employees who provide the documentation of a
5 different person than the face that they have?

6 A We pay the people that they say
7 they are.

8 Q When Lopez presented to you an ID
9 that does not have his own face on it for a loan
10 you gave him the loan?

11 A We gave him the loan to settle with
12 his immigration lawyer and move on with his life
13 to become a citizen.

14 Q At that time he told you that he
15 was not a citizen?

16 A Whatever he told us. I believe he
17 said it was a citizen issue. I don't remember
18 exactly the words that he used.

19 At that time when he asked for the
20 loan he had shown me paperwork from the lawyer.
21 It may be in his file, I don't know.

22 Q At least at that point you knew he
23 had no papers to work in this country?

24 A That is correct.

25 Q He remained employed?

1 C. Klahr

2 A Yes. He had the papers, he was in
3 the process. I saw the process.

4 Q What were your hours on the
5 premises of 437 Morris Park?

6 A From the time that I maintained an
7 office my hours when I was there, which could be
8 three or four days a week, would be 11:30 to 4:30
9 p.m., but my job is to go from building to
10 building, so I am not always there.

11 I was definitely not there every
12 day and I go and pick up supplies and deliver
13 them to different buildings every day. It is not
14 a firm time. It is a general thing when I was
15 there.

16 Q In 2011 --

17 A I was not there in 2011.

18 Q In 2012?

19 A At some point in 2012 we opened the
20 office there.

21 Q That was the office in the lobby?

22 A Yes.

23 Q You are testifying now that you
24 were there about three to four days a week,
25 correct?

1 C. Klahr

2 A Yes.

3 Q For about four or four and-a-half
4 hours?

5 A Yes.

6 Q That's daily?

7 A A couple of times a week, not every
8 day.

9 Q When you moved the office to the
10 basement did you maintain the same hours?

11 A Yes.

12 Q It was about three to four days a
13 week?

14 A When I moved downstairs maybe it
15 became four days a week, three to four days a
16 week. When I was there, I am an in-and-out
17 person. The nature of the job is I get called
18 and I have to drop and run, pick up supplies,
19 plumbing issues, I have to analyze the situation,
20 whether it is that building or a different
21 building.

22 I am not necessarily sitting there
23 at that time. However, any time between 11:30
24 and 4:30 p.m. is when I would be there if I was
25 there.

1 C. Klahr

2 Q In April of 2011 when you filled
3 out the application for employment for Lopez did
4 you ever have a conversation with him about his
5 son?

6 A No.

7 Q What about in the months after?

8 A No conversation that I can recall
9 about his son. You asked in the beginning if I
10 met his son. That would have been the only time.

11 Q You never discussed with Lopez
12 hiring his son to work in the building?

13 A No, absolutely not.

14 Q You never discussed with Lopez his
15 son's legal status in the country?

16 A Absolutely not.

17 Q You never discussed with him the
18 fact that his son being born here could use his
19 identity to justify paying Lopez?

20 A Absolutely not. I would never do
21 such a thing and never did such a thing. I am
22 smarter than that and had I know that I would
23 have looked and seen that the math does not add
24 up to anything that he claimed. I would
25 absolutely not do such a thing.

1 C. Klahr

2 Q You didn't ask him for
3 documentation when he filled out the application
4 for employment?

5 A We didn't do that in those days.
6 We substituted the application for employment
7 right before that. There wasn't even such a
8 thing a few years before. We just made a
9 photocopy of the Social Security card. We moved
10 on and this is what it became.

11 Q The entirety of your hiring process
12 before this application of employment was getting
13 a Social Security card?

14 A And making a copy, a photo ID,
15 whatever they had in their wallet.

16 Q What if they could not give you
17 anything?

18 A No such thing.

19 Q Nobody ever told you that they can
20 not provide you with a Social Security number to
21 work?

22 A That's right.

23 Q You don't employ anyone that does
24 not have a Social Security number?

25 A That's right, it can't be.

1 C. Klahr

2 Q Why can't it be?

3 A Because they have to get paid.

4 Q Have you ever paid an employee
5 through the name of another employee?

6 A For a couple of days.

7 MR. WEINBERGER: Off the record.

8 [Whereupon, a discussion was held
9 off the record.]

10 Q Could you explain what you mean by
11 for a couple of days you paid one employee
12 through the name of another?

13 A Yes, there have been people who
14 started work and either voluntarily quit,
15 disappeared or whatnot, so we never got their
16 paperwork. Let me back track.

17 It has happened on occasion where
18 the super would not wait for me to meet the
19 person and would start work with this potential
20 employee, just take somebody and start working
21 with them. If that person didn't survive, he
22 left or we got rid of him or whatever it is, then
23 I would give the super money to pay him.

24 Q You don't mean he died?

25 A No, he claimed to be able to do

1 C. Klahr

2 work and the super got rid of him after one day
3 because he could not do the work.

4 Q You would pay the super --

5 A I don't know the guy's name. It
6 was just this guy or whatever, give him \$50,
7 that's it. I added \$50 to the check and he paid
8 him and he left.

9 Q You would pay your super under
10 their name for the work of another employee?

11 A I would give him a petty cash
12 check.

13 Q You would give him a check in the
14 super's name for the pay of another employee?

15 A A check that he cashes to pay the
16 guy, petty cash check. The super cashed the
17 check because we had no way to find the guy. If
18 I knew the guy's name we did.

19 Q Was the payment you are talking
20 about right now wages for days worked?

21 MR. WEINBERGER: What is the
22 relevance to this in this case? There is
23 no relevance. I object.

24 MR. VALLETTI: You still have to
25 answer.

1 C. Klahr

2 A I don't know how you would classify
3 that.

4 Q You said somebody would work,
5 correct?

6 A Yes.

7 Q If they had not survived for
8 whatever reason you would pay the super a check?

9 A He showed up for work and left
10 before he finished.

11 Q That's not the question. The
12 person would work and you would pay the super a
13 check in the super's name, correct?

14 A Yes.

15 Q That was for the wages of that
16 employee, correct?

17 A It was a goodwill gesture that he,
18 you know --

19 MR. VALLETTI: Move to strike that
20 portion that is not responsive.

21 Q The pay that you gave to the super
22 in his name was for the wages of the other
23 employee, correct?

24 A It was to pay the guy. He didn't
25 provide us with any means to give him money.

1 C. Klahr

2 Q Was that a yes?

3 A It is what I said it was. We had
4 no way, sometimes we didn't find the guy. It
5 would take a week to find the guy.

6 Q You would give the super a check?

7 A Yes.

8 Q The check was in the super's name?

9 A Yes, that's right.

10 Q It was not for the work performed
11 by the super?

12 A That is correct.

13 Q It was for the work performed by
14 the employee?

15 A He is not an employee of mine.

16 Q You had employees that were not
17 employees of yours?

18 A The super took an employee.

19 Q The super could hire an employee?

20 A He is not supposed to. It has
21 happened back then. When I started this it
22 didn't happen because I would not let them hire
23 anybody.

24 MR. VALLETTI: Please mark these as
25 Plaintiff's Exhibit 9.

1 C. Klahr

2 [Whereupon, the documents were
3 hereby marked as Plaintiff's Exhibit 9 for
4 identification, as of this date, by the
5 reporter.]

6 Q I will show you what was marked as
7 Plaintiff's Exhibit 9 for identification with
8 today's date. It is Bates numbers 80 through 92.
9 Do you recognize these documents?

10 A Yes, time sheets for the super.

11 Q What else do you have there, the
12 second page?

13 A Time sheet for super. It is the
14 time sheet that I referred to earlier that they
15 filled out when they worked elsewhere.

16 Q The first page, that's a
17 superintendent time sheet, correct?

18 A Yes.

19 Q The employee's name is Nestor
20 Almonte?

21 A Yes.

22 Q Who do you know Nestor Almonte to
23 be?

24 A Lopez.

25 Q He is the super at 437 Morris Park?

1 C. Klahr

2 A Yes.

3 Q What is the time period on that
4 document?

5 A May 1, 2013.

6 Q This is May of 2013?

7 A Yes.

8 Q If we can look at the second page,
9 what is the date on this one?

10 A The same time period, May 1, 2013.

11 Q What is the employee's name?

12 A Manuel Almonte.

13 Q Is it your testimony that this is
14 the same person as Nestor Almonte here?

15 A Yes, I believe so. If not, then
16 the super would have asked for another check.

17 Q The handwriting on the employee
18 name, does that match the handwriting on the
19 employee name here?

20 A Yes.

21 Q How about the signature, whose
22 signature do you know that to be right there?

23 A Lopez.

24 Q Whose signature do you recognize
25 that to be?

1 C. Klahr

2 A Lopez.

3 Q He has two different signatures?

4 A One that he writes the first name
5 and one that he writes the second name, yes. We
6 know what this is. This is what he was doing.

7 Q What do you mean by that?

8 A He did this.

9 Q He did what?

10 A He fabricated stuff. This is not
11 his usual papers that he sent in.

12 Q What do you mean by that?

13 A He usually sends everything under
14 one name, I don't know. I can't answer that.

15 Q At this point he just randomly
16 decided to use two names instead of the one?

17 A I believe that he knew -- we now
18 know that he knew what he was doing in concocting
19 a scheme, but nobody caught it. That's what it
20 was. Nobody caught it.

21 In addition, he collected a check
22 for those hours. Somebody collected a check for
23 these hours, if it was submitted. I don't even
24 know that this was submitted.

25 Q How do you tell if a time sheet was

1 C. Klahr

2 submitted?

3 A It would come through on an E-mail
4 or fax or something.

5 Q He collected a check on this,
6 correct?

7 A He must have.

8 Q That means he submitted it?

9 A If it was submitted he collected a
10 check for it. This is the guy who is in charge
11 of submitting time sheets and submitted many,
12 many time sheets. What he sent in they just knew
13 that he was an authorized person and took what he
14 said and processed it.

15 Q You said you became aware that he
16 had a different name, correct?

17 A Yes.

18 Q That was sometime in 2012?

19 A When he asked for the loan, yes.

20 Q These papers are five months after
21 that time that you allegedly found out that he
22 had different names?

23 A Yes.

24 Q He perpetrated a scheme, you are
25 saying, for all of that time and nobody found

1 C. Klahr

2 out, that's your testimony?

3 A That is correct.

4 Q Are you the person that is in
5 charge of reviewing the time sheets?

6 A Yes, that is correct.

7 Q You are saying that he pulled this
8 scheme on you personally?

9 A Yes, that is correct.

10 Q You didn't catch this?

11 A No, I didn't.

12 Q You kept paying?

13 A Every sheet that I got that went
14 through the system was paid. It was just
15 generated, you know.

16 Q You just kept paying?

17 A We pay all the time.

18 Q It didn't even matter, just keep
19 paying?

20 A The answer is yes, we paid anything
21 on the time sheet.

22 Q If I filled out a time sheet for
23 you would you pay me?

24 A No.

25 Q Why not?

1 C. Klahr

2 A If you were an employee by me and
3 you filled out extra hours and whatever, yes, you
4 would get paid. Until we catch it and --

5 Q Nestor Almonte was an employee?

6 A He was the super in charge of the
7 time sheets.

8 Q Manuel Almonte was also an employee
9 for you?

10 A No, Nestor Almonte is the person
11 delegated by the company to handle the time
12 sheets.

13 MR. VALLETTI: That wasn't my
14 question.

15 THE WITNESS: That's the fine.

16 MR. VALLETTI: I'll get an answer
17 if I want one.

18 MR. WEINBERGER: Ask the question.

19 Q Nestor Almonte was an employee of
20 the company?

21 A Yes.

22 Q Manuel Almonte was an employee of
23 the company?

24 A Lopez was the one employed by the
25 name Almonte.

1 C. Klahr

2 Q At this point he is using two
3 different first names and scheming the company
4 the whole time?

5 A Yes, that is correct.

6 Q You didn't catch that?

7 MR. WEINBERGER: Objection.

8 A That is correct. I never knew this
9 until now that he did this. I saw on one time
10 sheet. I was aware of one. This is the first
11 time I am seeing this.

12 Q You never saw these time sheets
13 before?

14 A I never looked at them to see that
15 this guy did this more than one time, that is
16 correct.

17 Q Your testimony earlier is that you
18 received time sheets and reviewed them?

19 A Yes.

20 Q You are telling me now that you
21 didn't receive these particular time sheets and
22 you didn't review them?

23 A If I add up the hours it means I
24 reviewed them. You are right, it went over my
25 head.

1 C. Klahr

2 Q You know you are under oath here
3 today, correct?

4 A Yes.

5 Q What you are telling is the truth,
6 right?

7 A Correct. There are more of these.

8 MR. WEINBERGER: He is entitled to
9 answer the question.

10 MR. VALLETTI: He finished the
11 answer and I am moving on.

12 A This roving employee time sheet
13 that you are presenting, he has presented it
14 before, which is common for him to present,
15 except that you are pointing out now that he
16 changed the name on me.

17 Q He changed the name on you?

18 A Yes.

19 Q It wasn't two people doing the work
20 here?

21 A Absolutely not.

22 Q Is it possible that two people did
23 this work, one for Nestor and Manuel?

24 A Absolutely not.

25 Q Maybe you missed that, no?

1 C. Klahr

2 A No.

3 Q You missed one thing but not

4 another?

5 A No. This is a guy submitting here
6 the time sheets to pay me and you are talking
7 about somebody doing work that I never authorized
8 such a work. Nobody would do that. Nobody would
9 work for nothing. That's ridiculous.

10 Q Mr. Klahr, I am showing you what
11 has been marked as Plaintiff's Exhibit 7. Could
12 you identify this document, please.

13 A Yes, this is an employment
14 acceptance form.

15 Q What is the name on the bottom?

16 A Nestor Almonte.

17 MR. VALLETTI: That's all I have
18 for now. We are going to continue this
19 deposition at a later time. Thank you very
20 much.

21 Continued on following page to
22 allow for signature line and jurat.]

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25 [Whereupon, the examination of the

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witness was concluded at 5:00 p.m.]

CHANINA KLAHR

Subscribed and sworn to
before me this ____ day
of _____, 2015.

Notary Public

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WITNESS

EXAMINATION BY

PAGE

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C. Klahr

Mr. Valletti

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PLAINTIFF'S

DESCRIPTION

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*Exhibits were retained by counsel

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REQUESTS

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CERTIFICATION

STATE OF NEW YORK)

: SS.:

COUNTY OF NASSAU)

I, KAREN ZAMMIT, a Notary Public for and
within the State of New York, do hereby certify:

That the witness(es) whose testimony as
herein set forth, was duly sworn by me; and that
the within transcript is a true record of the
testimony given by said witness(es).

I further certify that I am not related to
any of the parties to this action by blood or
marriage, and that I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 3rd day of March, 2015.

KAREN ZAMMIT

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Signature of Witness

Sworn to before me this _____
day of _____, 2015.

NOTARY PUBLIC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

NESTOR ALMONTE,

Plaintiff,

- against -

437 MORRIS PARK, LLC, D/B/A F&T MANAGEMENT CO.,
INC.

Defendants.

-----X

600 Old Country Road
Garden City, New York
April 15, 2015
10:30 a.m.

CONTINUED EXAMINATION BEFORE TRIAL OF CHANINA
KLAHR, a Defendant herein, taken by the attorney
for the Plaintiff, Pursuant to Order, and held at
the above-mentioned time and place, before Kimberly
Dean, a stenographer and Notary Public within and
for the State of New York.

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A P P E A R A N C E S:

VALLI KANE & VAGNINI, LLP.

Attorneys for the Plaintiff

600 Old Country Road

Garden City, New York 11530

BY: ROBERT P. VALLETTI, ESQ.

GOLDBERG & WEINBERGER, P.C.

Attorneys for the Defense

630 Third Avenue

New York, New York 10017

BY: STUART WEINBERGER, ESQ.

1 S T I P U L A T I O N S

2

3 IT IS HEREBY STIPULATED AND AGREED, By
4 and between the attorneys for the respective
5 parties herein, as follows:

6 That the sealing and filing of the within
7 deposition be waived.

8

9

10 IT IS FURTHER STIPULATED AND AGREED that
11 such deposition may be signed and sworn to
12 before any officer authorized to administer
13 an oath, with the same force and effect
14 as if signed and sworn before the officer
15 before whom said deposition is taken.

16

17 IT IS FURTHER STIPULATED AND AGREED that
18 all objections, except as to the form are
19 reserved to the time of the trial.

20

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1 CHANINA KLAHR

2 C H A N I N A K L A H R,

3 called as a witness, after first having been

4 duly sworn by Kimberly Dean, a Notary Public in and

5 for the State of New York, was examined and

6 testified as follows:

7 DIRECT EXAMINATION BY ROBERT VALLETTI, ESQ.

8 COURT REPORTER: State your name and

9 address for the record, please.

10 THE WITNESS: Chanina Klahr. 730 East

11 7th Street, Brooklyn, New York 11218.

12 MR. VALLETTI: Morning, Mr. Klarh.

13 I'm Robert Valletti, as you know. I

14 represent Mr. Almonte in this matter. This

15 is a continued deposition. Originally it

16 sat on February 26th, and we are going to be

17 picking up, hopefully, where we left off.

18 I will just remind you of some of the

19 ground rules. First, I need all verbal

20 responses. As you know, we have a court

21 reporter here and she has to take down

22 everything that is said, so refrain from

23 non-verbal cues.

24 Also, if you don't understand a

25 question that I ask you, tell me and I will

1 CHANINA KLAHR

2 be happy to rephrase it for you. If you do
3 answer, we will assume that you understood
4 the question and your answer is your attempt
5 at being responsive to that.

6 If you need a break, tell me. I just
7 ask if any questions are pending that you
8 finish answering the question first before
9 we take the break.

10 A. Okay.

11 Q. I want to touch first on the
12 responsibilities and duties that you had. We
13 covered some earlier. As a manager at F&T
14 Management, which was responsible for the
15 maintenance or upkeep of 437 Morris Park and 1195
16 Sherman, were you able to discipline employees?

17 MR. WEINBERGER: Objection to form.

18 A. Yes.

19 Q. What kind of discipline are you talking
20 about? Would you give written warnings, verbal
21 warnings, or something else?

22 A. Verbal warnings and occasionally written
23 and signed. Written means I write it up and I ask
24 the employee to sign it. Sometimes if there was an
25 objection to signing, I would have a witness that

1 CHANINA KLAHR

2 would sign it, which in most cases was Mr. Almonte.

3 He was my witness for the majority of all cases.

4 Q. Any particular reason why it was

5 Mr. Almonte who was the witness?

6 A. Yes.

7 Q. Can you explain?

8 A. He generally I would feel if there was a
9 language barrier, since I don't speak Spanish and
10 let's say it was Spanish-speaking people, so I
11 wanted to make sure they understood what our
12 complaint was, what we are dissatisfied with, how
13 we are going to move forward, if we are not going
14 to move forward what the repercussions would be, so
15 therefore, I would have to make sure that someone
16 would translate, and he would serve as a
17 witness/translator, which many times on those
18 sheets would be marked as either translator or
19 witness, even if the person would sign, even if
20 that employee that we were disciplining would sign,
21 but still I knew they didn't understand my English,
22 written complaint.

23 So, he would act as the interpreter, signer,
24 and also because this generally was in later years
25 when I had an office in 437 Morris Park as opposed

1 CHANINA KLAHR

2 to I would assume that office was there
3 approximately two years or so, prior to that we
4 didn't have an office and I was working out of the
5 car.

6 So it would be the super of whatever building
7 I was at would be that person. Since I was there
8 and he was the super there, so he was mine. He was
9 my interpreter.

10 Q. And served as a witness too just in
11 case?

12 A. Yes. He was a witness, yes. Would be a
13 witness if I felt that I needed a witness, if it
14 was something that we -- if I had an employee that
15 needed -- it wasn't the first offense. It is a
16 repeat, you know, even if I felt that he did
17 understand English, I want the witness to witness
18 that the guy shouldn't say that I was terminated
19 for no reason.

20 Q. Was it a progressive discipline system
21 typically?

22 A. I don't know what you mean.

23 Q. I will explain. Would it start with a
24 verbal warning and progress to a written warning if
25 something was not taken care of and eventually

1 CHANINA KLAHR

2 maybe a second warning?

3 A. Something like that. I believe so. I
4 can't say exactly. Usually.

5 Q. It was determined based on what the
6 offense might have been. You could skip the
7 verbals and written and go straight to termination
8 if something grievous had happened?

9 A. I doubt that ever happened.

10 Q. How many of the employees to your
11 knowledge that you were responsible for had
12 difficulty either speaking or understanding
13 English?

14 A. How many number or what percentage?

15 Q. You can give me what you are comfortable
16 with.

17 A. Many, which would be 50 percent of the
18 employees. So over time that's many. Over an
19 actual work period in any given month, it is not
20 that many, but over a year when I have -- we had a
21 revolving door of employees because they wouldn't
22 keep up with the work. So those employees, you
23 could have a dozen employees in a calendar year and
24 only four or five actually on the payroll actually
25 working. The rest of them not there.

1 CHANINA KLAHR

2 Q. I was confused by the last thing you
3 said. You had a dozen employees but four or five
4 on the payroll?

5 A. On the payroll record, if you look at
6 what kind of tax returns that I gave that year, I
7 may have had a dozen employees work for me but some
8 of them only worked two weeks and then left or we
9 fired or terminated them because they couldn't do
10 the work. Or in other words, many people have
11 worked for me in a calendar year, but it was never
12 more than four or five, maybe six, per month.

13 Q. While the employees might have changed,
14 it was about six?

15 A. Correct.

16 Q. That was in 437 alone or did that
17 include 1195 Sherman?

18 A. That includes the whole 1195 Sherman,
19 everything.

20 Q. Before you had testified --

21 A. Roving employees. They are all over.

22 Q. You had testified in your previous
23 portion of the deposition that you were first
24 responsible for was it six or eight buildings, and
25 that was reduced?

1 CHANINA KLAHR

2 A. Yes.

3 Q. The time that you are talking about was
4 after the reduction?

5 A. Which time? In general that's always
6 the way it worked.

7 Q. No matter how many buildings that you
8 had at any given time, there were only about six
9 employees that you were responsible for as the
10 manager?

11 A. No, that was in the four buildings.

12 Q. In the four. That is what I was asking.

13 A. It would have been more.

14 Q. In the four buildings it was six, and
15 that included the supers at the four buildings, the
16 handyman, and porters? Explain to me what it
17 included.

18 A. At each building, independent of those
19 six people, at each building at each site there was
20 a super and a porter. So we are not talking about
21 the super and porter dedicated to the building. We
22 are talking about roving employees that worked at
23 1195 Sherman, at 437 Morris Park, and possibly
24 elsewhere.

25 Q. These were essentially when you say

1 CHANINA KLAHR

2 roving employees, you mean handymen?

3 A. Yes.

4 Q. Did that include any other positions?

5 A. No. If you want I can elaborate. We
6 call them handymen. Handymen.

7 Q. As the manager for 437 and 1195, among
8 others, did you set schedules for the workers?

9 A. Yes.

10 Q. Which workers did you set the schedules
11 for, and you can go by position?

12 A. I set schedules for everybody. All
13 employees.

14 Q. To be clear, it was the supers that you
15 set schedules for and handymen?

16 A. Yes.

17 Q. Porters?

18 A. Yes.

19 Q. Were there other employees with
20 different titles that you set schedules for?

21 A. I believe not.

22 Q. When Mr. Almonte was first hired, he
23 worked at 1056 Boynton, correct?

24 A. Yes.

25 Q. What was his rate of pay when first

1 CHANINA KLAHR

2 hired?

3 A. I have to look at the payroll.

4 Q. To your recollection, you don't recall
5 right now what he was paid when he was first hired?

6 A. I would assume it was on the -- that job
7 agreement or whatever we call it, application or
8 something like that. It should be there.

9 Q. Is this the application that you are
10 referring to, what has been previously marked as
11 Plaintiff's Exhibit 6? This was marked on 2-26-15.
12 Do we need to remark that?

13 MR. WEINBERGER: No.

14 A. It's a following page, which usually is
15 attached to the backside. It says agreement,
16 maybe. It looks like that.

17 MR. VALLETTI: This one is not the
18 same thing, okay. To the extent that I
19 don't have it in front of me, I will make a
20 demand.

21 A. I would have given it to you. Something
22 has to be there.

23 MR. VALLETTI: I don't have all of the
24 discovery in front of me for now.

25 I will ask what would it be called?

1 CHANINA KLAHR

2 A. It looks like it's an employment
3 acceptance form.

4 Q. Something along the lines of what was
5 previously marked as Plaintiff's Exhibit 7, but now
6 this is a different piece of paper that doesn't
7 correspond to the time Mr. Almonte was hired at
8 1056 Boynton. Which if you can recall, when was he
9 hired at 1056 Boynton?

10 A. In early 2011. I'm not sure if it was
11 the end of March or early April. The work orders
12 show it.

13 Q. Would it refresh your recollection if I
14 said that on Plaintiff's Exhibit 6 it was sometime
15 in February 2011?

16 A. That is just an application.

17 Q. Okay.

18 A. I do know clearly that he applied for
19 the job, which could explain a previous -- you have
20 to show a two-week trial period of work. And he
21 consented to do that but walked off after two days.
22 So that didn't culminate in real work because he
23 walked away after two days and came back at a later
24 period, which I believe was in March, to start
25 work. I don't have -- the work orders would show

1 CHANINA KLAHR

2 it, but I don't have it in my head.

3 Q. When you say he walked off after two
4 days, can you explain what happened during that
5 time period, why that occurred, if you know?

6 A. Okay. The super called me. I had
7 called the super to ask how is this new fellow
8 doing, and he said that he is not coming back. So,
9 I said "Why?" And he said, "There's some problem.
10 He said he can't work."

11 Q. Who was the super?

12 A. Wilton Munoz. He is the one that
13 introduced me to him.

14 Q. Him meaning?

15 A. Wilton introduced me to this guy,
16 Mr. Almonte. He brought him on board.

17 MR. WEINBERGER: One thing.

18 (Whereupon, a discussion was held off
19 the record.)

20 (Whereupon, the requested portion was
21 read back by this reporter.)

22 Q. For the two-day period that he worked,
23 did he receive payment?

24 A. Of course.

25 Q. How did he receive payment?

1 CHANINA KLAHR

2 A. A check would have been issued to the
3 super. A check would have been issued to the super
4 to forward it to Mr. Almonte, for someone that
5 doesn't work a week.

6 Q. It was a check issued to Wilton Munoz?

7 A. Correct.

8 Q. That was for the pay of Mr. Almonte?

9 A. Right.

10 Q. So, after two days he walked off. When
11 did he return, Mr. Almonte?

12 A. The work orders would show. I was
13 actually pursuing him. I believe that the time
14 frame happened during some vacation period that I
15 had. Maybe Passover holiday, but I don't remember.
16 It was something that I was not there in the
17 buildings for those bunch of days. It rode a
18 little bit. It took a little while. I was
19 interested in having him on board, so I was
20 pursuing him.

21 Q. Any particular reason why?

22 A. Because I was very satisfied with my
23 initial interview with him and I wanted to have him
24 work for me.

25 Q. When you rehired him, where was he

1 CHANINA KLAHR

2 working?

3 A. I don't know. I don't know what you
4 mean.

5 Q. You don't understand?

6 A. He was -- I don't know where he was
7 working. He may have been unemployed.

8 Q. I'm talking about the time that you
9 brought him back on.

10 A. A couple of weeks later. We just got
11 together. What happened was he had told me -- when
12 I got together with him, so, he told me that he
13 can't work for me because he can't take a check to
14 his name. I said "Okay. Have a nice day. Call me
15 back when you are ready to work."

16 Q. You said he cannot take a check to his
17 name. Can you explain what he meant or what you
18 took that to mean?

19 A. He cannot be paid on the books. Or he
20 wanted to be paid off the books.

21 Q. Did he say why?

22 A. If I recall, he said that he was getting
23 unemployment or something like that, which was to
24 be finished soon. I don't remember how soon that
25 he said. A couple of weeks or month. I don't

1 CHANINA KLAHR

2 remember what it was.

3 Q. I have to ask to clarify, he said he
4 wanted to be paid off the books because he was
5 receiving unemployment at that time?

6 A. When I met up with him, he said he has a
7 problem. So I said, "Let's talk about your
8 problem." And we met in person back outside of the
9 building at my car. He said, "I would like to work
10 for you and I know you want whatever, but I have a
11 problem. And if the way you are going to pay is to
12 write me a check, then I can't do it."

13 I had asked him why, and he told me that he is
14 collecting unemployment and that's going to be
15 finished soon, and right now he is not available.
16 He cannot do it unless I pay him another way, and I
17 said no, that is the way that goes.

18 Q. You said that you wouldn't pay him in
19 another fashion because he had this particular
20 problem where he couldn't be on the books?

21 A. That's correct.

22 Q. When you initially hired him, he didn't
23 present you with this issue?

24 A. No. I believe that we have to -- I
25 believe he may have started working directly that

1 CHANINA KLAHR

2 the super put him in not with a face-to-face
3 interview. That may have been those two days.
4 Again, I believe it was the Passover holiday or
5 some other. I don't remember what it was.
6 Whatever it was, he actually -- I was not there and
7 he tried him out without me interviewing him.

8 Q. When he was first working at 1056
9 Boynton, Mr. Almonte, you had not met with him and
10 had not interviewed him and had not had him fill
11 out paperwork?

12 A. I believe so.

13 Q. Mr. Munoz hired him to work in the
14 building?

15 A. You can call it that. He took him to
16 try him out.

17 Q. The building that Mr. Munoz was the
18 super for was 1056 Boynton?

19 A. Yes.

20 Q. Did you review Mr. Almonte's work for
21 the period at 1056 Boynton?

22 A. Not those two days. At a later period.

23 Q. When was that later period?

24 A. That is the question. The work orders
25 would show whatever that later period was that he

1 CHANINA KLAHR

2 made him fill out the paperwork. He then contacted
3 me and said that he would be available at this
4 date, which I believe was in March. And at that
5 time I started checking up on him, which was
6 after -- which is after the interview and after the
7 application and after the time that he told me "I
8 can't work right now." When he started, that is
9 when we started looking at the work.

10 Q. That's March of 2011?

11 A. I believe so.

12 Q. Just clarifying the years because you
13 said March.

14 A. March 2011. I believe it was early
15 March.

16 Q. At the time now we are speaking about
17 the period where you had him fill out the
18 application and you started checking his work.
19 Let's focus on that time period first. Did he
20 raise any issues with his ability to be paid on the
21 books at that time?

22 A. Yes. And when he said he resolved it,
23 that is when he began work.

24 Q. Did he tell you how he resolved it?

25 A. He called me on the phone and said that

1 CHANINA KLAHR

2 he resolved it.

3 Q. Did he tell you how he resolved it?

4 A. I don't believe that he -- I assumed
5 that he made the decision, which was part of our
6 conversation at the time, made the decision that he
7 is going to work and stop collecting unemployment.

8 Q. When was the first time that you spoke
9 to Wilton Munoz about Mr. Almonte?

10 A. When Wilton called me, which would be I
11 believe February of 2011. I'm not sure of the
12 dates. Very early 2011. I don't know. It could
13 have been earlier. The only reason I say February
14 was because that was the paperwork that we had. I
15 know that Wilton says the same thing, but I don't
16 know.

17 Q. We will call it February 2011 for now
18 based on your testimony. How did Wilton introduce
19 Mr. Almonte to you?

20 A. He called me, said, "I have someone for
21 you."

22 Q. What did he say about that someone? Did
23 he say anything in particular, he is a handyman or
24 has experience? What did he say if you could?

25 A. The language that he would have used is

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2 "he is a good guy, good worker." That is what.

3 That is how they speak.

4 Q. When you say that's how they speak, who
5 are you referring to?

6 A. Wilton Munoz. He would have said "he is
7 a good guy." Our communication we understand that
8 he is a capable person as opposed to someone who is
9 just looking for work and not very capable and
10 maybe just a painter and not capable of much else.

11 Q. Did he mention his name?

12 A. Wilton?

13 Q. Did Wilton mention Mr. Almonte's name?

14 A. Yes.

15 Q. What did he say his name was?

16 A. He always called him Lopez.

17 Q. Did you talk to Mr. Almonte, as Wilton
18 referred to him as Lopez, did you speak with him
19 before he began working at 1056 Boynton?

20 A. Again, I told you, there was a period
21 that Wilton put him in because I was not there for
22 let's say a week or so. That was the time that
23 he began and then walked off the job, so to speak.
24 That is when I had no way to pay him. Gave the
25 super the money to forward him the cash for those

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2 two days. I had no way to reach him.

3 Q. The conversation where Mr. Almonte told
4 you he cannot take a check to his name, was that
5 after he started at 1056 Boynton?

6 A. Yes. This was a face-to-face meeting
7 in my car. Yes.

8 Q. So, at the time that he began working,
9 what was the understanding from your perspective as
10 handling payroll as to how you were going to pay
11 Mr. Almonte for the time that he was working at
12 Boynton?

13 A. Again, he told me that when he worked --
14 let's backtrack a little bit. When he told me
15 that, I said, "Come back when you are ready to get
16 paid." So that is when he started getting paid.
17 That's when he started work. He didn't work in
18 between. That is why there is a gap from then.
19 There is a big gap in time of a couple of weeks or
20 whatever it was until he came back to work at
21 Boynton.

22 Q. Right. My question focuses more on the
23 time when he actually was working. He worked for
24 two days. At that time he is an employee and he is
25 entitled to pay.

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2 A. But he was not around. He disappeared.

3 Q. What I'm asking you is, how was it that
4 he was going to get paid hypothetically if he had
5 stayed working? You managed the payroll, correct?

6 A. Okay. I will explain to you. Generally
7 if that would happen and very rarely it happened
8 where the super didn't wait for me and took someone
9 and when I came to meet the guy, I would come meet
10 the guy. I would come to meet the new employee and
11 I would collect all of his identification and set
12 up payroll with him.

13 Occasionally the person disappeared, the super
14 would get rid of the guy after a day or two because
15 he can't do anything. If we couldn't find the guy
16 or he wouldn't talk to me, the guy wouldn't talk to
17 me because he is not wasting his time to talk to me
18 for an hour because he is not working there
19 anymore, just give the super the money to give to
20 me. That would happen sometimes.

21 Q. Did employees often ask to have the
22 super paid their own wages?

23 MR. WEINBERGER: Objection.

24 A. No. It was only when they disappeared.
25 Two and a half days of work, whether he told him

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2 goodbye, the super told him, or they themselves
3 walked off the job because they saw they couldn't
4 handle the work.

5 Q. How often did this occur where an
6 employee would work a short period of time and you
7 would not have established a payroll for that
8 person by the time they were beginning work?

9 A. Before I had an office there, even a
10 little bit before that, the supers would really do
11 it without my permission. I wouldn't necessarily
12 know about it. In other words, if they had a
13 backlog of work, they would call me and say, "I
14 need helpers. I need helpers. I have a big job."
15 And I said "Okay. I will send you someone from
16 another building."

17 But if they decided they didn't like the guy
18 or they couldn't wait or it didn't materialize and
19 help didn't come, they would take someone off the
20 street or wherever they got them from.

21 Q. Let's try and get a frequency on this.
22 At this point we have workers performing work at
23 your buildings without being on payroll, correct?

24 A. It has happened, I explained to you, on
25 rare occasions, very infrequently. I probably only

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2 know of three such employees, where one of them
3 lasted a long time. And again, the super -- I
4 didn't even know about the guy for a while. The
5 super, sometimes the supers hired the people and
6 paid them out of their own pocket or something. I
7 don't know about them.

8 You can come to the building and I would say
9 "Who is that guy?" "My cousin." "What is he
10 doing?" "Nothing." "You sure?"

11 Q. It would be the super's responsibility
12 at that point to pay that person?

13 A. If the guy was really working for me, I
14 would always say I have to talk to the guy.

15 Q. How did you determine if someone was
16 working for you?

17 A. If I see the guy is working there and I
18 would catch the guy working and someone told me the
19 guy is working there, there were reasons that I was
20 very -- business reasons that I was very sensitive
21 to make sure that I didn't hire any criminals that
22 could get -- that could make trouble for me.
23 Generally some supers, including Wilton Munoz
24 himself, learned that slowly by making that mistake
25 and getting accused of a theft, which his worker

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2 did, some guy did, and then they said you are
3 right, we have to be careful. We cannot just take
4 anyone. We have to check the guys out. Something
5 like that.

6 Q. If you saw a person working, you would
7 basically make a demand to the super that that
8 person now has to be on payroll?

9 A. It was very, very rarely. Probably
10 three times that I'm aware of such a thing
11 happening.

12 Q. You said before there were times when
13 people would last two or three days and be gone
14 without even you knowing it?

15 A. Right. And it was probably all Wilton
16 Munoz. Of all the buildings, it was probably all
17 Wilton Munoz.

18 Q. Okay. Fast forwarding past that
19 three-week period where there was a gap after
20 Mr. Almonte walked off the job, you spoke to him
21 again about now another position doing something
22 for your management company, correct?

23 A. The purpose of having him work at
24 Boynton was just to see if he really knows the work
25 that I need to become a super elsewhere.

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2 Q. Was he hired as anything else before
3 becoming a super at 437 Morris Park?

4 MR. WEINBERGER: Objection to form.
5 If you can answer.

6 A. The purpose was to be a super. However,
7 I would tell them that I'm not making you a super
8 until I decide you are qualified to be a super, so
9 it would be called a handyman.

10 Q. He eventually became hired as a
11 handyman. At that time what was his rate of pay?

12 A. His rate of pay was probably \$8 an hour.

13 Q. How were they paid generally, weekly or
14 biweekly, something else?

15 A. They collect a check every week for all
16 the hours they worked. The hours could vary,
17 especially a new employee and handyman, I have to
18 be very flexible with them. Sometimes they were
19 giving me limited hours. Not necessarily eight
20 hours a day.

21 Q. What was the standard workweek for a
22 handyman at that time?

23 A. A regular handyman is a regular 40-hour
24 week. But a perspective super is somebody that I
25 was sensitive to him possibly having another job

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2 and he was leaving the other job and I would have
3 to accommodate that I need to see many different
4 types of duties done. Plumbing, electric, and I
5 needed to see many, many different types of work, a
6 new tile floor in a bathroom. I don't have them
7 all lined up. I would be flexible in saying:
8 "Hello, are you available? Now I have a job." And
9 he says, "I can come and give you four hours
10 tomorrow and I can give you two hours the next
11 day." And he would be there maybe every day in a
12 week but very limited hours. Or I would
13 accommodate the hours in different ways.

14 Q. That was generally how you handled
15 prospective supers with flexible hours?

16 A. Yes.

17 Q. What about with Mr. Almonte, at his rate
18 of pay of \$8 an hour, did you discuss with him what
19 his workweek was going to be at the time he was a
20 handyman first?

21 A. When I discussed with them, I tell them
22 that they have to give me ten days to two weeks
23 consecutively. I knew it would happen and I would
24 give them -- I would be flexible with it, but it
25 was common that the people would tell me, no, I

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2 can't give it to you and I would say goodbye. If
3 you can't commit to it, I will not waste my time
4 with you.

5 But if you commit to it and if I see the guy
6 was good, and he told me I really can't give you
7 eight hours a day for ten days, I can give you a
8 couple of hours today and tomorrow, I would be
9 flexible with them.

10 Q. Let's talk about Mr. Almonte
11 specifically.

12 A. Okay.

13 Q. When he was hired as a handyman, what
14 was your expectations of his workweek?

15 A. I would assume that he had told me that
16 he wasn't working -- I believe he told me he was
17 not working elsewhere, so we didn't have that
18 problem.

19 Q. At the time that he was hired, a
20 handyman, \$8 dollars an hour, 40 hours a week?

21 A. Should have been close to 40 hours a
22 week unless he had an excuse that he couldn't come.
23 When you take someone like that, I have to take my
24 kid to the babysitter, I have an appointment with
25 food stamps, it was common that I had to be

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2 flexible. I know it was not a job flexibility
3 issue. I remember it was not. It was not a job
4 conflict.

5 Q. At the time that you hired him to be the
6 handyman, what did the hiring process consist of?
7 And I will be pointed, was there an interview, an
8 application, and other paperwork that was filled
9 out? Explain a little bit about how he became
10 hired at 437 Morris Park as a handyman.

11 MR. WEINBERGER: You said two
12 different addresses.

13 Q. I will clarify the question. At the
14 time that he became hired as a handyman at 437
15 Morris Park, this is after that two-week period or
16 three-week period, some weeks that he had missed,
17 what was the hiring process for him to become that
18 handyman?

19 MR. WEINBERGER: Objection.
20 You can answer, if you know.

21 A. Whatever the paperwork is we would have
22 given you.

23 Q. I'm asking you from your recollection.

24 A. I can't say. I don't remember.

25 Q. Do you remember if he had filled out an

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2 employment application at that time?

3 MR. WEINBERGER: Are we asking him as
4 a handyman? I'm confused. To clarify, are
5 we asking as a handyman at Boynton or where
6 else?

7 MR. VALLETTI: I have been very
8 specific. This is hired as a handyman at
9 437 Morris Park.

10 Q. At the time that he came back, we had
11 passed that couple week period where he is no
12 longer employed and then he comes back and becomes
13 a handyman at 437 Morris Park.

14 A. That is the same job. The same job.
15 That one, when he became a super, there would have
16 been paper. It wouldn't have changed.

17 Q. Explain to me how he became a handyman
18 at 437 Morris Park.

19 A. Whatever interview and paperwork process
20 there was earlier, we just -- he said, "Now, I'm
21 ready to work." And I said "Okay." Every day I
22 could send him somewhere else.

23 MR. WEINBERGER: You are confusing
24 what he is saying. That's the problem. You
25 are confusing.

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2 A. Clarify. In other words, I can put the
3 guy wherever I want. He was not designated to work
4 at 1056 Boynton. It was a couple of days we needed
5 him there, so he started over there. And I would
6 move him anywhere. A handyman is a roving
7 employee. They are not building specific.

8 Q. At the time Mr. Almonte become a
9 handyman, where did he work?

10 A. Either Boynton or Morris Park.

11 Q. For the time period before he became a
12 super, he was a handyman who could work almost
13 anywhere of the buildings that you were responsible
14 to manage?

15 A. That's correct.

16 Q. To your recollection, what buildings did
17 he work at during that time period?

18 A. Only the work orders would tell us the
19 truth, but from what I recall, I was pushing him to
20 get into -- if I had a job at 437 Morris Park, I
21 would send him there. I wanted him to be super
22 there and I wanted him to see the nature of the
23 building there.

24 Q. Were you satisfied with his work during
25 that time period?

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2 A. Yes.

3 Q. At some point Mr. Almonte becomes the
4 superintendent of the building, correct?

5 A. Yes.

6 Q. When was that?

7 A. We had terminated the previous super we
8 will call him. The super that was -- we were
9 trying to terminate. At the termination process of
10 that one, he became the super.

11 Q. At that point, was there a hiring
12 process? And I will be specific. Was there now
13 another interview or was there paperwork filled
14 out, things of that nature?

15 A. There was not what we call an interview,
16 but there may have been a paper, an employment
17 acceptance form or something like that.

18 Q. You had a conversation with Mr. Almonte
19 about becoming a super prior to him becoming a
20 super, correct?

21 A. Yes.

22 Q. What was that conversation about? What
23 was discussed at that point?

24 A. The responsibilities of being a super.

25 Q. Could you elaborate?

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2 A. The job description of a superintendent
3 is very different of a handyman. And I would
4 clarify, that he understands the responsibilities
5 and all that entailed and is agreeing to do that
6 before I put him in.

7 Q. At that point did you discuss his pay
8 for that specific position, the superintendent at
9 Morris Park?

10 A. Most likely.

11 Q. Do you recall what was discussed?

12 A. No. But should have been a paper.

13 Q. How did you typically pay your supers?

14 A. Could you specify?

15 Q. Sure. Let's say during 2011, if you
16 hired someone to be a super at a building, what was
17 the typical compensation package?

18 A. Okay. He would get an apartment to live
19 in rent free. We would explain to him that
20 although he has increased responsibility and he
21 will be paid for his time, but he will then earn
22 some time off. We can call it there is sick days,
23 vacation days, personal days. Something that only
24 the superintendent received not a handyman.

25 Q. You said sick days, vacation days,

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2 anything else?

3 A. No, just leave it there.

4 Q. He earned time off. Would these be
5 treated as paid days off?

6 A. Paid days off.

7 Q. You had this discussion with Mr. Almonte
8 when he became super, correct?

9 A. At a point prior to him becoming the
10 super. In other words, it was not the date of the
11 guy that left. It was when we were sure that we
12 are ready to make the move, which let's say would
13 have been we are going to do this in a week, I
14 would have already had the conversation with him
15 and I'm comfortable that he is ready to take the
16 reigns of the building.

17 Q. At that time you said a paper had been
18 filled out. Was that the application that we had
19 referenced earlier?

20 A. I believe so.

21 Q. Plaintiff's Exhibit 6?

22 A. No, not this one.

23 Q. It was not Plaintiff's Exhibit 6?

24 A. No, I think this is the first
25 application.

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2 Q. When you say the first application, how
3 many applications did he fill out?

4 A. It was not -- it is the back kind of
5 paperwork. Not an application. Something like
6 that.

7 Q. Closer to what, Plaintiff's Exhibit 7?

8 A. Yes.

9 Q. This was filled out at the time period
10 we are now discussing, which is sometime in April
11 of 2011?

12 A. This is the form that we discussed, the
13 responsibilities of being a super as opposed to
14 being a handyman, and he is ready to take that job
15 and we are ready to give him the job.

16 (Whereupon, a discussion was held off
17 the record.)

18 MR. VALLETTI: Back on. I'm going to
19 make a demand for the employment acceptance
20 form that we are discussing currently during
21 the time period, let's put it as sometime
22 from February to April of 2011 for Nestor
23 Almonte, Lopez, or whatever name he had used
24 at that point. And we will get to those
25 questions. But for now I will make the

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2 demand for the employment acceptance form.

3 A. His name would be -- we knew him as

4 Manuel Almonte. His nickname was Lopez.

5 Q. So, at the time that he filled out the
6 employment acceptance form, you said that you knew
7 him as Lopez but that his name was Manuel Almonte?

8 A. Correct. His nickname was Lopez.

9 Q. He didn't mention to you he had any
10 issues at that point being paid on the books,
11 correct?

12 A. When? There was only one such
13 conversation.

14 Q. At the time that he filled out the
15 employment acceptance form, he never said to you, I
16 have a problem getting paid on the books?

17 A. No.

18 Q. At that point, what did you use in terms
19 of putting him on the payroll to pay him his wages,
20 at that time we are talking?

21 A. To my knowledge his name was Manuel
22 Almonte and that is how he was paid. And,
23 actually, I referred to him as that. It was only
24 the boys, all of the workers and handymen called
25 him Lopez, but I called him Almonte.

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2 Here and there you will see some reference to
3 Lopez, but, you know, I know him as Manuel Almonte.

4 Q. You previously testified that you knew
5 him as Lopez, correct?

6 A. Correct.

7 Q. You don't know him as Almonte?

8 A. Again, his nickname is Lopez. Like I
9 have many of my workers go by different names than
10 their legal name, whether it is Chucky or whatever
11 it is. I have a guy Billy and his name is not
12 Bill. I don't know where they get these names
13 from. That is how I am introduced to them and
14 that's what they are called.

15 Q. Your testimony today is that you knew
16 him as Almonte during this time period, 2011 on?

17 A. Right. When we started doing the
18 paperwork, that is how he said my name is this. I
19 asked him about it.

20 Q. What did you ask him?

21 A. I asked him why are you called Lopez?

22 Q. What did he reply?

23 A. He said the exact same thing that he
24 said in testimony here, that's his mother's
25 family's name and that is his name, nickname,

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2 whatever.

3 Whatever it is he spelled it out exactly on
4 his own testimony.

5 Q. What documents, if any, did he produce
6 for you at the time that he accepted the position
7 as a super at 437 Morris Park?

8 A. Whatever I have copies of.

9 Q. Did he present to you a Social Security
10 card?

11 A. Probably. I would assume so.

12 Q. Did he present to you an identification
13 card?

14 A. Should have.

15 Q. Are you sure that he did?

16 A. No. I'm not sure what he supplied. I
17 do know that we are looking at a problem where he
18 came to me at a later period with the license,
19 which he did not obviously give me in the
20 beginning.

21 Q. In the beginning he didn't give you --

22 A. Not the license, right. I don't know
23 what he showed me.

24 Q. If he told you that his nickname is
25 Lopez, did you ask him why he went by Manuel

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2 Almonte on his documents?

3 A. That's what I asked him. I mentioned to
4 him when he filled out the application, which is to
5 start work, I said, "What is this?" It was Lopez.
6 He said, "That is my mother's name," whatever.
7 Exactly the little paragraph that he said on the
8 previous testimony, which is funny to me that he
9 said it. That's exactly what he said.

10 Q. By the way, did you review any documents
11 before testifying today?

12 A. No.

13 Q. You just said that you read his
14 testimony.

15 A. No, no, no. I didn't read the
16 testimony. I know that he said it.

17 Q. You were at his deposition?

18 A. Yes.

19 Q. Other than being in the depositions
20 before, did you speak to anyone today about your
21 testimony other than your lawyer?

22 A. No.

23 Q. Are you on any medication today?

24 A. No.

25 Q. Is there any reason why you cannot tell

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2 the truth today?

3 A. No.

4 Q. At the time Mr. Almonte became the super
5 at 437 Morris Park, how was he personally going to
6 get paid?

7 A. Same way that he always got paid.

8 Q. What was the same way that he always got
9 paid?

10 A. He received a check in the name Manuel
11 Almonte.

12 Q. You said later that he gave you an ID
13 bearing the name Manuel Almonte?

14 A. Right.

15 (Whereupon, a discussion was held off
16 the record.)

17 MR. VALLETTI: Mark that Plaintiff's
18 Exhibit 10.

19 (Whereupon, the above-referred to
20 document was marked as Plaintiff's
21 Exhibit 10 for identification, as of
22 this date.)

23 Q. Mr. Klahr, I'm showing you what's been
24 marked as Plaintiff's Exhibit 10 for
25 identification. It's a copy of a conditional

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2 driver's license. What name is on that conditional
3 driver's license?

4 A. Manuel Almonte.

5 Q. Is this the license that Mr. Almonte,
6 Mr. Lopez, whoever it was at the time, is that the
7 ID that that person had presented to you when you
8 filled out the paperwork as he became the super at
9 437 Morris Park?

10 A. No. He provided it to me at a later
11 date.

12 Q. At the time that he was hired as the
13 super at 437 Morris Park, he didn't provide you
14 with any license?

15 A. It was missing. He was supposed to
16 produce it.

17 Q. There came a point later when he did
18 give it to you?

19 A. Right.

20 Q. When was that?

21 A. This is my handwriting, and it is marked
22 December 13, 2012.

23 MR. VALLETTI: Let the record reflect
24 that he indicated on Plaintiff's Exhibit 10
25 that was his handwriting on top and what he

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2 said speaks for itself. Thank you.

3 Q. Is this the face you knew as the super
4 at 437 Morris Park?

5 A. This is the face that I know as the
6 super at Morris Park, yes.

7 Q. That's Manuel Almonte.

8 A. This is Manuel Almonte.

9 Q. On Plaintiff's Exhibit 10?

10 A. If you look at it now, knowing other
11 information, you can say maybe it is his son. But
12 when I took it, when he gave me the copy, I didn't
13 question it. I see characteristics. It looked to
14 me. You have got to see the licenses that I look
15 at. Faces are not perfect. Very poor photos.

16 Q. You believe that that face was the face
17 of the super, was that in 2012 or in 2011 when the
18 employment acceptance form was filled out?

19 A. In 2012, when I badgered him for some
20 reason that you are missing your ID, you are
21 missing the photo identification. When he provided
22 it, I just threw it in the file. I didn't really
23 critique it.

24 Q. Did you look at it?

25 A. I glanced at it. I saw it said Manuel

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2 Almonte.

3 Q. Did you ask if it was his license?

4 A. No.

5 Q. Could he have provided you with a
6 different license and with the same name and you
7 still wouldn't have looked at it?

8 A. That makes no sense.

9 Q. Could anyone with the name Manuel
10 Almonte pass for the super of the building 437
11 Morris Park during that time period?

12 A. I don't know what you are getting at. I
13 would say no. I don't know what you are talking
14 about.

15 Q. Did you discuss with Mr. Almonte at the
16 time that he became the super at 437 Morris Park
17 what his hours were going to be?

18 A. Yes.

19 Q. What did you discuss with him about
20 hours at that time?

21 A. I discussed with him that as a
22 superintendent our experience in that building had
23 shown that the hours that he would work are this
24 group of hours. And that is what he would be
25 expected to do, which I needed his consent to

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2 understand that he is going to do that before I put
3 him in as a super.

4 Q. Okay. I didn't hear any numbers in
5 there. I want to, let's try and get some
6 specificity on what you mean by that.

7 A. Probably a 47-hour workweek, roughly. I
8 don't know. You would have to look at what -- his
9 payroll would reveal that.

10 MR. VALLETTI: Mark that Plaintiff's
11 Exhibit 11.

12 (Whereupon, the above-referred to
13 document was marked as Plaintiff's
14 Exhibit 11 for identification, as of
15 this date.)

16 Q. I'm going to show you what's been marked
17 as Plaintiff's Exhibit 11 for identification. It's
18 a six-page document that are the payroll records
19 for 437 Morris Park turned over by defendants.
20 Looking at the first page, we should be able to
21 discern his hours as you just testified.

22 A. Okay.

23 Q. You testified that looking at his
24 payroll records you would be able to tell what
25 hours he was working, correct?

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2 A. Yes.

3 Q. On the first page, we will go page by
4 page, if you would like, on the first page, are you
5 able to tell what hours that he worked?

6 A. It has pay for 46 hours each week, the
7 formula, but it is not broken down to a later page.
8 On the first page you don't see it.

9 Q. Are there any hours listed on the first
10 page?

11 A. I don't see any.

12 Q. How about the second page?

13 A. Yes. Bottom of the page.

14 Q. At this time period, this is May 2011,
15 correct? The payroll was being given out on a
16 biweekly basis?

17 A. Yes.

18 Q. The amount here listed is \$800?

19 A. Right.

20 Q. That's for two weeks, correct?

21 A. Yes.

22 Q. Why are there no hours listed on the
23 first page for the weeks that are listed, May 13,
24 2011 through 7-29-2011?

25 A. I don't know. They should be listed.

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2 Q. You were in charge of payroll, correct?

3 A. Yes.

4 Q. On the second page, this is from August
5 15, 2011 until 9-29-2011, still no hours appear on
6 the payroll records, correct?

7 A. Right.

8 Q. The first time hours do appear is in
9 October of 2011; is that correct?

10 A. Yes.

11 Q. Why are these hours missing?

12 A. I don't know.

13 Q. On the right-hand side going back to
14 page 1, there is an indication of either normal or
15 manual at some points throughout these payments.
16 At least let's go on the first page first. Can you
17 explain what it means by normal or manual or
18 something along those lines? Right down here.

19 A. I believe those are payroll company
20 codes, but I believe looking at it that manual
21 means a check that came not from the payroll
22 company, a manual check.

23 Q. That was authorized by you?

24 A. I assume so.

25 Q. What would the check that was manual be

1 CHANINA KLAHR

2 for, if it weren't for --

3 A. I don't know. I don't know now. We
4 have to pull up a copy of the check or a record or
5 whatever it was.

6 Q. In June of 2011, do you remember giving
7 Lopez or Manuel Almonte a check in the amount of
8 \$2,077 approximately?

9 A. I don't recall.

10 Q. The first time we do see the hours
11 October 12, 2011, there's hours listed here, you
12 said it was approximately a 47-hour workweek, so
13 this reflects a 46.6-hour workweek?

14 A. That is usually what they worked.

15 Q. Did Mr. Almonte work a roughly 46-, or
16 47-hour workweek every week during this time
17 period, let's say from May 2011 through September
18 2011?

19 Because at that point we need some explanation
20 as to the hours, is it your testimony that he
21 worked a 46.6- or 47-hour workweek all of those
22 weeks?

23 A. Yes, otherwise it would have changed,
24 based on the hours.

25 Q. How do you know these are based by the

1 CHANINA KLAHR

2 hour if there is no hours listed on the payroll?

3 A. I don't know. You get paid based on the
4 hour. The same way that you know on there without
5 looking at the hours. He had to produce a demand
6 for a check.

7 Q. If we don't look at the hours, we can't
8 look at the hours here, you readily can't know
9 whether he worked 50 hours this week, 60 hours that
10 week, 20 hours this week, correct?

11 A. You don't see it, but that is not what
12 it was.

13 Q. You can't tell from these documents,
14 correct?

15 A. Maybe.

16 Q. Can you tell from these documents what
17 the actual hours worked were?

18 A. No, I'm assuming that that was his
19 paycheck.

20 Q. You really don't know what hours that he
21 worked because they are not indicated on the
22 records, correct? They get there later, but for at
23 least this time period, you can't tell, I can't
24 tell, nobody can tell?

25 A. You don't see it.

1 CHANINA KLAHR

2 Q. At some point according to these
3 records, the pay switches from biweekly to weekly,
4 correct?

5 A. Correct.

6 Q. Let's say, does it accurately reflect
7 that that occurred sometime in August and September
8 of 2011?

9 A. It appears that way.

10 Q. Drawing your attention to April of 2011
11 here, there is a deduction of \$250. Do you know
12 what that was for?

13 A. No.

14 Q. You are in charge of the payroll,
15 correct?

16 A. Right.

17 Q. Why would he get less than the money
18 that he worked that particular week?

19 A. The payroll -- we can ask the payroll
20 company for what reason there is for that.

21 Q. The payroll company wouldn't make a
22 deduction without your authorization, correct?

23 A. Right. It would be something they
24 received documentation to make these checks.

25 Q. The documentation they received came

1 CHANINA KLAHR

2 from you?

3 A. Probably.

4 Q. On average, regular week that you want
5 to do the payroll?

6 A. At that time, I don't know. You know,
7 whatever. It is me, Mark Sherman. I don't know.
8 Let's see whose handwriting is on it. I'm hesitant
9 to say it definitely was me.

10 Q. Mark Sherman was someone else who
11 handled payroll?

12 A. He has an office that handled the
13 payroll company. They dealt with the payroll
14 company.

15 Q. They dealt with them. Is the payroll
16 company Mark Sherman's company?

17 A. No, they are an outside company. Mark
18 Sherman works for F&T Management, and he had an
19 office staff. And I leaned on the office staff for
20 many things. There was a period where I took over
21 myself dealing with the payroll company but
22 probably much later.

23 Q. Do you recall when you took over
24 payroll?

25 MR. WEINBERGER: Objection. He didn't

1 CHANINA KLAHR

2 say that. All right. If you can answer.

3 A. I believe that I started dealing with
4 the payroll company directly when I moved into an
5 office at 437 Morris Park. I'd have to look up the
6 dates. I'm not sure.

7 Q. Was it sometime in 2012 that you had an
8 office at 437 Morris Park?

9 A. Yes.

10 Q. The office was first located in the
11 lobby?

12 A. Yes.

13 Q. And moved down to the basement?

14 A. Yes.

15 Q. You don't recall when that lobby office
16 was created? I believe your prior testimony puts
17 it at early 2012.

18 A. Whatever time it was, this wouldn't have
19 happened exactly that day. It was a process. It
20 was some time period before I was gradually taking
21 stuff away from them and doing it myself.

22 MR. VALLETTI: So, I'm going to make a
23 demand now for actually the third time, this
24 demand, for the pay stubs that are Manuel
25 Almonte's. To let you know, those demands

1 CHANINA KLAHR

2 were made in our original demands and
3 haven't been answered.

4 MR. WEINBERGER: That's absolutely not
5 true. You have every single document we
6 have. I think we gave you what the pay
7 records are.

8 MR. VALLETTI: These are pay records.
9 These are not pay stubs. And there is
10 testimony that there are pay stubs that
11 accompany these. Those demands have been
12 made.

13 MR. WEINBERGER: We will look again.
14 If we have them, we have them. We will turn
15 it over.

16 Do you want to go off the record?

17 A. No. Whatever this is, this is, what's
18 attached to it. The check comes with the pay stub.
19 Until he got direct deposit and it became a
20 different pay stub.

21 MR. WEINBERGER: Okay.

22 Q. Pay stubs exist before direct deposit,
23 correct?

24 A. Some form of something.

25 MR. WEINBERGER: Take it under

1 CHANINA KLAHR

2 advisement.

3 MR. VALLETTI: I will be specific
4 about these. I will demand the pay stubs
5 for Manuel Almonte and/or Nestor Almonte or
6 Nestor Lopez for the time period where he
7 started working to the time that his
8 employment was separated.

9 MR. WEINBERGER: Okay. We will look
10 again. Whatever it is we will produce. If
11 we have it, we will produce it.

12 Q. Going back to, I guess we will look at
13 first, let's go page by page here. The amounts
14 Mr. Almonte received in pay, what were the amounts?
15 Let's go paycheck by paycheck.

16 A. Paycheck, it shows \$800. The second one
17 shows \$550 that he received. Next one is \$800.
18 Fourth one is \$800, and the fifth one shows
19 \$2,077.37.

20 Q. That is a manual entry, though, correct?

21 A. Yes. Whatever that means. The next two
22 on the page show \$800 as well.

23 Q. Continuing on the second page here.

24 A. The first two paychecks are \$800 each.
25 The rest of them are \$400.

1 CHANINA KLAHR

2 Q. That time period was when it switched
3 over to the weekly paychecks, correct?

4 A. Yes. That's what it shows.

5 Q. During at least this time period we are
6 going through on the first two pages, the payroll
7 records reflect there was no fluctuation in
8 Mr. Almonte's hours, correct?

9 MR. WEINBERGER: Objection to form.

10 Go ahead.

11 Q. Let's say based on his pay, there was no
12 fluctuation in the hours worked, correct?

13 A. Usual hours, you know, unless he was --
14 it shows otherwise. There was a formula. There
15 was also I would like to remind you that I
16 explained that they were paid for, I don't know if
17 you want to call it on call. We told them we know
18 that the hours are this, we are going to pay you to
19 be available.

20 Q. Is that in addition to the payroll
21 records that are in front of you?

22 A. What do you mean in addition? That is
23 the pay. The pay.

24 Q. I need some clarification. I really
25 don't understand what you answered there.

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2 MR. VALLETTI: Can I have a read back
3 on the last question.

4 (Whereupon, the requested portion was
5 read back by this reporter.)

6 Q. My question is this, those hours reflect
7 the 46-and-change-hour workweek, correct?

8 A. The estimated what we know was a safe
9 number he has to be available for.

10 Q. His pay was based on that workweek,
11 correct?

12 A. Correct.

13 Q. It wasn't --

14 A. His pay was based on the actual hours.
15 Now, if he worked more, he would get paid more.
16 And he would usually have to ask for consent for
17 overtime. But if not, I paid it. That's just the
18 way it went if I liked my employees; if not I would
19 say we can't do that, you signed the paper that
20 says you are not allowed to work overtime.
21 Generally, this was a formula of hours that we
22 figured out between being in the building and there
23 could be weekend calls or something, weekend
24 emergencies that he has to attend to.

25 So the regular work hours were probably

1 CHANINA KLAHR

2 roughly 40 or less hours. Probably 37 hours, if I
3 recall correctly. The rest was time that was used
4 for nights and weekends.

5 Q. Could you clarify what you said before,
6 that Mr. Almonte's pay was going to be based on
7 roughly a 47-hour workweek as opposed to now his
8 regular hours being 40 or less?

9 A. Yes. It is one and the same. The super
10 is paid to -- we know in each building we learned
11 how much time they need. And that became something
12 we had to get him to agree to be available those
13 hours.

14 And we would pay him those hours unless he
15 would be absent without leave. He was not there
16 and he wasn't available, then we would talk about
17 missed work and how we will deduct that. If he did
18 more work, extra overtime, meaning an example, I
19 had reserved hours for night and weekend calls in
20 my 47 hours, if during a regular day I ask them to
21 extend their day to finish a job and not leave it
22 for the next day, that was not part of the reserve
23 hours for emergencies, they got paid extra for it.

24 Q. Based on the records that are in front
25 of you, the two sheets that we have in front of you

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2 right now that are part of Plaintiff's Exhibit 11,
3 while they don't list the hours, would it be your
4 testimony that Mr. Almonte didn't work any hours
5 not even one hour beyond his regularly scheduled
6 46.6- or 47-hour workweek?

7 A. That's correct, yes.

8 Q. During this time period, would it then
9 also be your testimony there were no emergency hot
10 line calls that he had to respond to?

11 A. No, that is not what I said.

12 Q. I'm asking you if it is.

13 A. No, just the opposite. There may very
14 well have been. And that's why he -- that's why we
15 pay that amount of money because he was supposed to
16 be working or be on call in case it happens.

17 Q. Other than the irregularity of the
18 manual check, which we don't know what that is
19 about, but for these weeks in front of you, do
20 these weeks reflect any overtime that you paid
21 Mr. Almonte?

22 A. No. There was no overtime requested
23 over here.

24 Q. When you say requested, did he have to
25 request overtime?

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2 A. He would have to ask to be paid for
3 overtime. He didn't say that he worked overtime.

4 Q. Is it a policy when you were employed
5 with 437 Morris Park or rather with F&T Management
6 that the supers had to request overtime before they
7 worked it?

8 A. Yes.

9 Q. Does that include the times that you
10 gave orders to work beyond the regularly scheduled
11 hours?

12 Q. Or would that consent be implicit there?

13 A. It would be implicit there.

14 Q. If you gave a directive to a super,
15 Mr. Almonte or perhaps a super at a different
16 building, to work hours beyond that which you
17 allotted in these pay records, it should be
18 reflected in his pay, correct?

19 A. That's correct, by increased pay, yes.
20 You should see an increase in pay.

21 Q. During this time period, were there any
22 hot line calls that Mr. Almonte received that go
23 beyond his 46.6- or 47-hour workweek during this
24 time period?

25 A. No, absolutely not.

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2 (Whereupon, a discussion was held off
3 the record.)

4 (Whereupon, the requested portion was
5 read back by this reporter.)

6 A. Could I elaborate on that?

7 Q. Is there something that you would like
8 to add to your last answer?

9 A. Perhaps. All of the hours that he was
10 -- all the hours over 40 hours were paid at the
11 overtime rate. That was our agreement. That was
12 the policy. That was what was done.

13 Q. Is that all?

14 A. Yes.

15 Q. Looking at page 3 of Plaintiff's Exhibit
16 11, this is again a piece of the payroll. At this
17 point, there is weekly payments, correct?

18 A. Yes.

19 Q. Those payments are each \$400 and down
20 there there's \$400.40?

21 A. Sick pay or whatever. The bottom line
22 is the full check was there, yes.

23 Q. During this time period, which is
24 reflected from October 2011 to November 2011, would
25 it also be your testimony that Mr. Almonte did not

1 CHANINA KLAHR

2 have to respond to calls after the scheduled
3 workweek hours were finished?

4 A. Could I rephrase that a little?

5 Q. If you don't understand the question, I
6 will rephrase it for you. If you want to explain.
7 I will do the work. You said you want me to do the
8 work. During the time period we are looking at
9 here, October 2011 to November 2011, the check
10 amounts other than the 40 cents on these last
11 three, they are the same, 400 throughout, correct?

12 A. Yes.

13 Q. Do these records reflect that
14 Mr. Almonte had to work beyond the regularly
15 scheduled hours of the 46.6- or 47-hour workweek?

16 A. He didn't work any additional hours.

17 Q. Is it also your testimony that during
18 this time period there would have been no calls
19 made after the regularly scheduled hours were
20 worked? I'm referencing the hot line calls that
21 you would send to him via text message or email.

22 A. There was no additional calls beyond
23 that we planned for and paid for.

24 Q. The payment that we are looking at in
25 these records is what was planned for, correct?

1 CHANINA KLAHR

2 A. Correct.

3 Q. It was planned before he worked those
4 hours, correct?

5 A. It was an agreement before he took the
6 job as super.

7 Q. You paid him based on an agreement
8 before he took the job as super?

9 A. We paid him based on that there was X
10 amount of work hours that he's expected to do
11 during the daytime hours. And there's expected --
12 there is an anticipated amount of emergency service
13 calls that he has to attend to nights and weekends.

14 And our experience was that since they tended
15 to not always record them because it's 3:00 in the
16 morning, whatever it was, so we did have ways of
17 recording them because we had the hot line calls
18 and we would verify the incident, and we worked it
19 out over time how much was the most that he could
20 have worked. And we told him that as long as you
21 do your work, you will get paid. If you don't
22 work, then you won't get paid. Which would be
23 reflected.

24 Q. The pay was based on the agreement?

25 A. The agreement of hours worked.

1 CHANINA KLAHR

2 Q. The agreement was made when he took the
3 job as super?

4 A. Yes.

5 Q. The pay was based on that agreement?

6 A. The pay was -- this is the hours that he
7 has to work to get paid.

8 Q. It was based at the time on the
9 conversation that you had with him that when you
10 take the job as super, you will get paid this?

11 A. It was based at the time prior to his
12 starting as super that that's going to be the
13 agreement, and if there is more, we will pay more.
14 Which we did. And we also asked him verbally and
15 then again in writing if we owe you any money. And
16 he would produce a list and we paid him for it at
17 the end of every year.

18 Q. Is it your testimony from May 13, 2011,
19 to November 23, 2011, Mr. Almonte never worked one
20 hour beyond what the agreement was when he took the
21 job as super?

22 A. He did not tell us that if he did. So,
23 we assumed he didn't, and we would ask and I gave
24 time sheets. Again, we would ask him, in addition
25 to this, we would ask him prior to the end of the

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2 year, usually it was October or Thanksgiving,
3 before Thanksgiving, we would ask our supers, or
4 all our employees, we asked him is there -- we want
5 to close out the payment for the year. Do we owe
6 you money for anything? Did you buy something that
7 you didn't get cash receipts? Sometimes it will
8 get lost and he produced a receipt, even though he
9 should have handed it in. Do you have any requests
10 for money which on the form it says specifically
11 overtime, whatever it lists there. And he would
12 produce a list and we would pay it.

13 Q. You made the employees request or
14 question or demand any money they felt was owed to
15 them in overtime?

16 A. No, that's wrong and a horrible way of
17 putting it.

18 Q. I will rephrase the question. You asked
19 the employees if you as the employer, F&T or 437
20 Morris Park or 1195, owed them anything at the end
21 of the year, correct?

22 A. Yes. In addition to what they were
23 getting every week, which was a fluctuating amount,
24 if they -- if the amount fluctuated. If they did
25 more work, they got paid more. If they were absent

1 CHANINA KLAHR

2 without leave, whether it was an extended sick
3 period beyond their sick days or taking personal
4 days or whatever it was that they didn't do the
5 work, then they had deductions taken off their
6 check, which is reflected on their payroll. Not on
7 this page.

8 Q. Was the agreement that you had with
9 Mr. Almonte to pay him a flat salary every week?

10 A. No, no such agreement with anybody ever.

11 Q. Those records, do they show that it was
12 an unwavering amount every week?

13 A. No, they don't. If you look at only one
14 page out of the 52-page week, you will see several
15 of them.

16 Q. Do you want to look at more?

17 A. Yes. I would like to look at more.

18 Q. Take a look at these.

19 A. Is this the whole calendar year?

20 Q. It's a portion.

21 A. I would like you to look at the whole
22 calendar year and tell me. I will say that he did
23 a very good job of knowing how many hours he is
24 supposed to work and he was a very good employee,
25 that he stuck to it, if that was the case, but it's

1 CHANINA KLAHR

2 not the case. It varied.

3 Q. Is that why 437 Morris Park or 1195
4 Sherman Avenue keeps getting sued for not paying
5 overtime?

6 A. That is why people who have some kind of
7 misconception and are told things by people to
8 mislead them, probably, to think they can collect
9 moneys they don't deserve. The answer is no. They
10 get paid for every single hour they worked.

11 Every single hour. As a matter of fact, I'm
12 very proud to say that I paid for additional hours
13 beyond what they worked.

14 Q. Now, you paid employees for hours they
15 didn't work?

16 A. I was generous and didn't deduct when I
17 could have deducted.

18 Q. What would you make deductions for?

19 A. Extra sick days beyond the agreed upon
20 time. Personal days they were told they can't, if
21 they are not there they will not get paid or
22 whatever it was.

23 Q. It's your testimony that you overpaid
24 employees rather than underpaid them?

25 MR. WEINBERGER: Objection.

1 CHANINA KLAHR

2 A. It is my testimony that I never
3 underpaid any employee. Never.

4 Q. Did you overpay any employees for time
5 that they were not entitled to?

6 MR. WEINBERGER: Objection as to
7 relevance.

8 A. I believe so. And I asked them that and
9 offered them that at the end of the calendar year.

10 Q. Did you tell Abraham Finkelstein or
11 Kalman Tabak that you had overpaid employees?

12 A. They know what I was doing. They don't
13 look at it that way, you overpaid employees. We
14 make them happy. We try and make them happy.

15 Q. Looking again here, we are at November
16 2011 through December.

17 A. Okay.

18 Q. At this time could you read for me the
19 weekly paychecks for Mr. Almonte.

20 A. \$400 until you get to the last one. For
21 some reason it is \$176. It is not the regular
22 check.

23 Q. If we want to go --

24 A. That is not the regular check. The next
25 check there is \$400.

1 CHANINA KLAHR

2 Q. Again, weekly through that time
3 period he didn't have extra hours?

4 A. He did not work extra overtime.

5 MR. VALLETTI: Mark this Exhibit 12.

6 (Whereupon, the above-referred to
7 document was marked as Plaintiff's
8 Exhibit 12 for identification, as of
9 this date.)

10 Q. I will show you what's been marked as
11 Plaintiff's Exhibit 12. They are Bates numbered
12 593 through 598. Defendant's exhibit Bates
13 numbering.

14 Could you take a look at these and tell me
15 when you are done. Could you tell me what those
16 are? Have you ever seen them before?

17 A. Yes.

18 Q. What are they?

19 A. This is a request for pay that Mark's
20 office received to pay -- request from a payroll
21 company to get a check. This is how a check was
22 requested.

23 Q. Who would that request come from?

24 A. From me.

25 Q. You created those documents?

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2 A. Yes.

3 Q. You sent that to who in particular?

4 A. I believe I sent it to Mark's secretary.

5 Q. Do you remember his or her name?

6 A. No. Any one of several people. I don't
7 know who is the designated person.

8 Q. After you sent that to Mr. Sherman's
9 secretary, do you know what would happen with this?

10 A. I believe the payroll company received
11 the information in some fashion, which I didn't
12 see, and the check was given to me at the end of
13 the week to hand out.

14 Q. This is the payroll period this
15 indicates at the top 2011, correct?

16 A. Yes.

17 Q. Part of it goes into 2012, when it turns
18 into January?

19 A. Yes, 2012. Yes.

20 Q. When you created these, did you use a
21 program to create them or was this in Microsoft
22 Word or something else?

23 A. I don't know. I probably received it
24 from them as a format and entered it.

25 Q. Who did you receive it from?

1 CHANINA KLAHR

2 A. Someone in Mark's office.

3 Q. I'm confused. I thought you sent those
4 to Mark's office?

5 A. I understand. They asked me to give
6 them the data a certain way. I used the format
7 they wanted.

8 Q. Was it a program that generated it or
9 was it a --

10 A. I don't think it was a program.

11 Q. You controlled creating these documents
12 which were sent out for payroll purposes?

13 A. Yes. I put in the numbers. I would
14 have to give them the hours the guys worked in
15 order for them to know what to request from the
16 payroll company.

17 Q. What were those documents based on?

18 A. On the employees' hours.

19 Q. What would you use to determine what an
20 employee worked for the time period?

21 A. I deal with them all the time. They
22 have time sheets and all the regular records same
23 as always.

24 Q. Anything else other than the time sheets
25 that you used to calculate hours?

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2 A. Unless there is holidays or something
3 like that. I use my personal calendar or notebook.
4 I had notes what was there and I modified. What
5 the employees would write down is that he worked
6 every day, including the holiday. So I would have
7 to check if he worked on the holiday, did he have
8 hot line calls or did he not. Then I adjusted it
9 accordingly. If he didn't work, he got paid as
10 holiday pay; and if he did work, he got paid
11 regular way. He got paid the full amount at the
12 end of the week.

13 Same thing for sick days until you maxed out
14 sick days and then we started deducting.

15 Q. You were referencing holiday before.
16 Was that something that you just testified to on
17 the first page here? Is there a holiday noted on
18 there?

19 A. No, I noticed a different one.
20 Different page.

21 Q. On the first page here, the week
22 reflects two weeks, Week 1 and Week 2. The first
23 week is 10-27 to 11-02 and Week 2 is 11-03 through
24 11-09; correct?

25 A. Yes.

1 CHANINA KLAHR

2 Q. During this time period you have what is
3 written in the middle Manuel Almonte both weeks?

4 A. Yes.

5 Q. Can you explain what this line means
6 here?

7 A. This divides up his hours.

8 Q. Manuel Almonte super both weeks and then
9 it gives a calculation. What does "both weeks"
10 mean?

11 A. Each week. They have to issue two
12 checks for the thing.

13 Q. The absences is to be recorded down
14 here. You recorded these absences?

15 A. Yes.

16 Q. Where did you get the absences from?

17 A. From my notebook. In other words, the
18 super calls in sick, so I would write it down.
19 This is where it went.

20 MR. VALLETTI: I will make a demand
21 for the notebook.

22 MR. WEINBERGER: Okay.

23 A. I don't know that I have it. You can
24 have it.

25 Q. When did you start keeping the notebook?

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2 A. I always have notebooks.

3 Q. During the time period Mr. Almonte
4 worked for 437 Morris Park and 1195 Sherman, you
5 maintained a notebook?

6 A. Yes.

7 MR. VALLETTI: Just for the basis of
8 the demand, that particular notebook is the
9 one that I'm referencing for the demand.

10 MR. WEINBERGER: Okay.

11 Q. Are the absences at the bottom here, are
12 these like cumulatively kept? What I mean by that
13 is, would these appear on another sheet so that you
14 knew for future reference that these are the sick
15 days that had been used?

16 A. Yes.

17 Q. On the next page here, which shows two
18 different weeks, 11-10 through 11-16 and 11-17
19 through 11-23, the page looks very similar in that
20 it is essentially the same thing except notes the
21 same absences, correct?

22 A. Yes.

23 Q. The next sheet here is again two weeks,
24 11-24 through 11-30 and then 12-1 through 12-7.
25 The notation in the middle differs this time. Can

1 CHANINA KLAHR

2 you explain why it differed here?

3 A. Because he -- we paid him holiday pay.

4 Even though he didn't work, he got paid for that
5 time.

6 Q. That was a paid holiday during the first
7 week, which is 11-24 through 11-30?

8 A. Yes.

9 Q. On the next page here, weeks reflected
10 are 12-8 through 12-14 and 12-15 through 12-21.
11 Again, it's 2011. There's also a two-week
12 breakdown, correct?

13 A. Yes.

14 Q. It shows the same amount of hours as
15 reflected on the other weeks?

16 A. Right.

17 Q. On the next page it shows weeks 12-22
18 through 12-28 in 2011 and 12-29 through 12-31.
19 This has more of an annotation in the middle. Take
20 your time to review that so we can have a question
21 about it.

22 A. Okay.

23 Q. In the middle there, there's a plus
24 section. Can you read what it says after the plus?

25 A. This is for the end of the calendar

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2 year. It says, "End of year bonus of one week pay
3 of \$400. Applied all of it to overtime. I suggest
4 a separate check. Additional check for \$42 toward
5 reimbursements for supplies, plus \$250 to replace
6 Check Number 686 for Cablevison."

7 Q. It says an end-of-year bonus. Are
8 bonuses typical?

9 A. No.

10 Q. What is the policy behind giving
11 employees a bonus?

12 A. No policy.

13 Q. Is it at your discretion?

14 A. Yes.

15 Q. Why would you give someone a bonus in
16 your discretion?

17 A. If we want to make the super feel good,
18 we have something extra for the holidays.

19 Q. When you say the super, are you
20 referencing here Manuel Almonte or Nestor Almonte?

21 A. Manuel Almonte.

22 Q. When you say there that the bonus is one
23 week pay \$400, apply all of it to OT, what does
24 that mean?

25 A. That means they have to know how to

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2 apply the check. This is my instructions to them
3 to put it towards overtime hours.

4 Q. This is a bonus that appears on a check
5 as overtime?

6 A. I hope so. Supposedly. You have a
7 check for \$400.

8 Q. Why wouldn't you have made it a bonus
9 check?

10 A. Because it is a very big problem to have
11 different employees get. We don't want -- there's
12 too many complaints amongst employees that we pay
13 different amounts to different people, so we didn't
14 want them to -- so they didn't see that. They knew
15 they got a check and they didn't -- it wouldn't say
16 bonus on it.

17 Q. It was a bonus paid in the form of
18 overtime?

19 A. Yes. I'm not sure what you mean. They
20 got a bonus. Extra money. This is the result of
21 the signed sheet requesting of the superintendent
22 what we discussed earlier, do we owe you money, did
23 you find any cash receipts that were never
24 reimbursed. Even though they are not supposed to
25 buy anything, but whatever it is. Do you feel that

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2 we owe you money? We want to give you everything
3 and put it all on this year's calculations and say
4 we are starting the year new.

5 Q. You are talking about the \$42 towards
6 reimbursement and the 250 for Cablevision, right?

7 A. Yes.

8 Q. That does not apply to the \$400 bonus,
9 correct?

10 A. That's an additional check. It was \$42.

11 Q. I wanted to clarify because there were
12 two different lines.

13 A. That is where those -- that's where that
14 information stems from. It was generated from
15 actually like a document that was submitted, signed
16 that we are requesting it, and another document
17 that he supplied making lists and supplying
18 receipts and writing down calculation for hours,
19 which he didn't make, other supers did, but he
20 didn't.

21 Q. The final page of Exhibit 12 is for the
22 pay period now into 2012 of 1-1 through 1-4 and 1-5
23 through 1-11. This one is indicating that Manuel
24 Almonte has received a different amount.

25 Why does this particular pay sheet show a

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2 different amount there? Did he receive a raise?

3 A. Yes.

4 (Whereupon, a discussion was held off
5 the record.)

6 (Whereupon, the above-referred to
7 documents were marked as Plaintiff's
8 Exhibits 13 through 20 for
9 identification, as of this date.)

10 (Whereupon, the requested portion was
11 read back by this reporter.)

12 Q. Earlier I made a demand for the
13 employment acceptance forms and I want to ask you a
14 clarifying question.

15 I'm showing you what's been marked as
16 Plaintiff's Exhibit 15. For your note, it is
17 application for employment. Does that coincide
18 with Plaintiff's Exhibit 7, so that we have clarity
19 as to the two documents, that usually go together
20 when an employee fills out an application?

21 A. Yes.

22 Q. Plaintiff's Exhibit 6 from the previous
23 deposition, this bears the name of Manuel Almonte
24 for an application employment, correct?

25 A. Yes.

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2 Q. In the section that lists down there,
3 "Please list beginning from most recent your
4 previous experience."

5 A. Right.

6 Q. That references a company there that is
7 called Defoe Construction?

8 A. Yes.

9 Q. The dates of employment listed there are
10 1995 to 2002, correct?

11 A. Yes.

12 Q. This is your handwriting?

13 A. Yes. Based on an interview, what he is
14 telling me.

15 Q. At the time, this is when you were
16 talking to Manuel Almonte, which was also referred
17 to as Nestor Lopez or Lopez, whatever you knew him
18 as, correct?

19 A. Yes.

20 Q. The date on that application is February
21 21, 2011?

22 A. I knew him as Manuel Almonte. He was
23 called Lopez.

24 Q. In April of 2013, I will show you
25 Plaintiff's Exhibit 15. This is another

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2 application for employment, correct?

3 A. Yes.

4 Q. The name on this is Almonte Nestor,
5 correct?

6 A. Yes.

7 Q. Noting the date is April 29, 2013?

8 A. Yes.

9 Q. Here the previous employment lists a
10 company named Defoe, except it is spelled
11 differently at this point, correct?

12 A. Here he filled it out in his on
13 handwriting.

14 Q. He being who?

15 A. Nestor, who had told us that he was
16 using -- he told us that he received citizenship
17 papers and the name that he was working up until
18 now was not his real name, and he verified this was
19 the documentation that he gave us, lawyer letters
20 and all kind of things to substantiate this. So we
21 had him fill out a new application.

22 Q. What was the purpose of filling out that
23 application in Plaintiff's Exhibit 15?

24 A. We needed documentation for him.

25 Q. When he was first hired, though, he had

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2 not presented you with any documentation, correct?

3 A. You are supposed to.

4 Q. He didn't?

5 A. He didn't give everything and we know
6 that the license came later. I don't know what it
7 was that generated that incident. I asked for it
8 and got it at that time.

9 Q. I will ask the question again. At the
10 time that he filled out the prior application, he
11 didn't present you with documentation?

12 A. Not the license, correct.

13 Q. At this time he did present you with
14 documentation, correct?

15 A. He presented documentation from the
16 lawyer stating that his -- at this stage it was
17 final already. We knew this was a period of going
18 on for a little while because he had informed us of
19 this and given us the documentation. But I'm not
20 sure this date coincides with when he got his
21 Social Security card or something that he was going
22 to start getting paid. It was a process.

23 Q. Why did you require documentation in
24 April of 2013 but not in February of 2011?

25 A. I asked for it. I don't know what

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2 happened over there why we didn't get it. I don't
3 know why I didn't get it. It was an oversight.
4 Or I got some things and not the license. I don't
5 know.

6 Q. Is there any particular reason why you
7 filled out the application in 2011 in your
8 handwriting?

9 A. No real reason. This was in my car.
10 And I had a clipboard, and this is done with a
11 table with him in front of me at a desk.

12 Q. Is there any particular reason why he
13 filled out the later application?

14 A. Because he was at a desk where he can
15 sit down and do it.

16 Q. How come you didn't just hand him the
17 clipboard when you had it the first time in
18 February of 2011?

19 A. There's no rhyme or reason. That's the
20 way that it varied.

21 Q. Do you often fill out paperwork for your
22 employees?

23 A. No. Except for the application. For
24 part of the application. The only thing that you
25 fill out is the application.

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2 You can ask me what -- I don't believe there
3 is any other kind of paperwork.

4 Q. How about employment acceptance forms,
5 do you usually fill those out too?

6 A. The whole document is my document.

7 Q. What about your handwriting as to
8 portions of it?

9 A. The whole document is my document, and
10 they sign an agreement.

11 Q. In Plaintiff's Exhibit 7, it is your
12 handwriting everywhere except the signature, and
13 print name, and the date on Exhibit 7?

14 A. That is correct.

15 Q. For the employment acceptance form, you
16 write on it and fill it out for the employee. On
17 the employment application there are times where
18 you filled it out for the employee, correct?

19 A. On the employee acceptance form, that is
20 my -- that is the place for me to write not for
21 anyone else. On the application for employment,
22 it's flexible. Anyone could write over there.

23 Q. Do you instruct your employees on how to
24 fill out forms?

25 A. I don't even know of any forms they fill

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2 out. Again, I'm usually doing them. You would
3 have to ask me or enlighten me what you are
4 referring to.

5 Q. You said that you are usually filling
6 out the forms then, correct?

7 A. I'm creating those forms that we have
8 been talking about. I don't know of any other
9 forms that they do except for things they do
10 without my authorization, which we found out about.

11 Q. What did you find out that employees do
12 without your authorization?

13 A. I found in the buildings, like in the
14 basements, a letterhead or something from the
15 company, which I never made, and says they are an
16 employee and this, that, in a whole letter.

17 Q. Employees have falsified documents
18 coming from the company?

19 A. They would say they created their own,
20 you know, document. They needed employment
21 verification for some kind of public assistance and
22 that's what the guy did. On two occasions, I
23 caught two different people with that.

24 Q. Did you ever instruct your employees on
25 how to properly fill out tax forms?

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2 A. What kind of tax forms?

3 Q. W2s, W4s, 1099s, I9s, things of that
4 nature?

5 A. Yes. A W4 and I9s, yes. That I'm aware
6 of.

7 Q. I will show you what's been marked as
8 Plaintiff's Exhibit 13, a two-page document. It is
9 bearing Bates numbers 357 and 374. Defendant's
10 exhibit Bates numbers. I will ask you to take a
11 look at those and tell me when you are finished.

12 A. I'm familiar with this.

13 Q. What do you know that to be?

14 A. The first page is a paycheck or the pay
15 stub that the super gets. You are referencing the
16 note on the bottom. And the second one is a
17 notice, which is a management notice that I
18 occasionally would inform the supers of certain
19 instructions, especially if there is a change to
20 something that they have been doing. This one in
21 particular is about cleaning the sidewalks.

22 Q. Okay. I guess I will turn your
23 attention now first to the line on the bottom,
24 which if you could read that slowly for the court
25 reporter, please.

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2 A. "Effective Monday, June 24, 2013, super
3 has to do the cleaning of the sidewalks and curbs
4 before 8:00 a.m. Any summonses received after
5 6-24-2013 will reflect the penalty for negligence
6 which is deducted from paycheck."

7 That's what it says. I never did it. That's
8 what it says.

9 Q. There is a policy in place as of June of
10 2013, that the super can be penalized with a
11 deduction from pay for not properly cleaning the
12 sidewalks, correct?

13 A. No. It was a means of they were very --
14 they were very resisting to take on this job, which
15 before they used to do and we were getting tickets
16 all the time and the super would say, "It's not my
17 problem," and we would say, "The porter is only
18 there to help you. And if you are not going to
19 enforce the porter's times that he is saying that
20 he is saying he's in the building doing the work
21 and he's not there, then we are going to give it
22 back to you." And the manager -- that warning just
23 didn't materialize into any kind of positive. We
24 are still continuing getting summonses, so we told
25 them we are going to do this.

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2 However, we never, ever did it to them. It
3 was a means of making them understand it is a
4 serious responsibility and we are not going to look
5 away.

6 Q. It was a threat to your employees that
7 if they don't clean the sidewalks or not the
8 employees, the super, they would be penalized by
9 deduction from their pay, correct?

10 A. It was a means of making them
11 understand. We had many conversations. They
12 didn't treat it with seriousness. And it was a
13 means of getting them to understand it is part of
14 their job and they have to do it.

15 Q. This was basically a change in the
16 super's duties, correct?

17 A. This was a modification in the super --
18 our supers used to have to do it and then we made
19 porters do it. And now we went back to it.

20 Q. Did any of your supers ever have to take
21 care of these summonses in court?

22 A. Yes.

23 Q. Who had to do that? What were the names
24 of the supers?

25 MR. WEINBERGER: Objection as to

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2 relevance.

3 A. I don't know the names. What I did
4 instruct the supers, if a summons did come, we
5 didn't deduct from his paycheck ever. No such
6 thing ever transpired. But we explain to him he
7 will have to deal with it and go down on the court
8 date on the summons and explain to the judge
9 whatever the situation was. Sometimes the summons
10 was unwarranted and they had pictures to prove it.

11 So, they would go down and discuss it with the
12 judge, and whatever happened happened.

13 It was a pay day. They even got extra money
14 if they had to go down. They got extra money to --
15 carfare and whatnot.

16 Q. They received extra money if they had to
17 show up in court?

18 A. Yes. It was a paid day plus they got
19 extra money. That's correct.

20 Q. It's your testimony that the supers
21 would not have to use either a sick or a personal
22 day to tend to this occurrence?

23 A. Yes.

24 Q. Do you have any evidence of that?

25 A. Yes.

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2 Q. What evidence do you have?

3 A. I would have that I know of one time
4 that Mr. Almonte had to do that and it's on his pay
5 stub.

6 Q. Do you remember when he had to do that?

7 A. I don't know in my head. There should
8 be paperwork there.

9 Besides what's on the pay stub, there may be a
10 paper.

11 MR. VALLETTI: I demanded the pay
12 stub, so I'm not going to do it again. But,
13 any other piece of paper that may evidence
14 Mr. Almonte having to go to court to handle
15 a summons issued, I will make a demand for
16 that.

17 A. When I say pay stub, it would be on
18 those things that you have. It would be an item
19 listed, extra money. It would not be the hourly
20 fee. It is not in addition to his regular hours
21 and money. There would be another item there.

22 Q. A manual entry in the payroll records?

23 A. No. An additional -- not necessarily.
24 Maybe. I believe that the incident that I'm
25 talking about, the one time that I recall, I

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2 believe the payroll company did it. I submitted to
3 them give extra \$25 for I forget what I called it,
4 but it was for going to court.

5 Q. It was the amount that you recall was
6 \$25?

7 A. Yes. I believe I called it lunch money
8 or carfare. I gave them something for it.

9 Q. While Mr. Almonte was employed with 437
10 and 1195, you also gave him orders to work at
11 different buildings, correct?

12 A. He requested to work additional hours.
13 So, the agreement for that would be at different
14 buildings.

15 Q. When did that begin? When was the
16 request made to work additional hours?

17 A. Probably in 2013. I would have to
18 review the payroll records or something to get kind
19 of the idea of what it was exactly about.

20 Q. Is it your testimony that Mr. Almonte
21 didn't work at 1056 Boynton, excluding that time
22 period in the beginning, let's focus 2011, 2013,
23 your testimony is that Mr. Almonte didn't work at
24 1056 Boynton or perform work at 1056 Boynton while
25 he was the super at 437 Morris Park?

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2 A. I'm not saying that.

3 Q. Did Mr. Almonte perform work at 1056
4 Boynton during that time period when he was the
5 super at 437 Morris Park?

6 A. It is possible. Yes. And other sites,
7 yes. To my recollection, 1101 Manor.

8 Q. And 1056 Boynton?

9 A. I didn't say that. I'm not sure of
10 that.

11 Q. You are sure of the 1101?

12 A. Yes.

13 Q. What kind of work was he performing at
14 those? Was it the same or similar types of tasks?

15 A. Yes. Some kind of assisting the super
16 or maybe there was no super and instead of working
17 here we asked him to go there if possible. He had
18 a car, so we asked him.

19 Q. Was that a regular occurrence or was it
20 frequent? What kind of frequency did he do that?

21 A. Very infrequent. I would say it's
22 possible, again, if there was no super, which is
23 not a common thing, but it did happen or if the
24 super went on vacation or something and the
25 handymen that were covering the building had a

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2 problem, either they called them directly or I
3 asked him to go look over what they are doing to
4 make sure they have the right idea.

5 It is not something that would have been
6 clocked, something that you considered many hours.
7 It was an in-and-out job. Going there and time
8 travel or probably equal to some time spent.

9 Q. So he didn't actually go over there and
10 perform work while there?

11 A. Right. He may have assisted but not
12 that he was doing the job himself.

13 Q. If he was assisting, who was he
14 assisting?

15 A. There were handymen there.

16 Q. What kind of things would he assist in
17 doing?

18 A. If there was a job that the workers
19 weren't confident that they are doing it right or
20 something like that or know how to do it, he would
21 go and show them how to do it.

22 Q. Could you give me examples?

23 A. Some kind of plumbing job, let's say.
24 Not everybody knows plumbing. I'm talking about
25 not just changing a faucet. Some plumbing whether

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2 it's soldering and the guy knows this and he knows
3 that. But I need someone who is confident. If you
4 are not sure what you are doing, you don't want to
5 mess things up.

6 Q. You would send Mr. Almonte because you
7 were confident in his work that he could do a good
8 job or at least instruct some others?

9 A. Both.

10 Q. While he was out at 1101 Manor, who was
11 in charge at 437 Morris Park?

12 A. He wasn't always in the building. He
13 was in charge.

14 Q. Let's say if he wasn't always in the
15 building, who would be taking care of the
16 activities that were going on at 437?

17 A. He supervised them. In other words --

18 Q. Who?

19 A. Mr. Almonte, the super, was tasked with
20 making sure that maybe six or a dozen different
21 jobs are going on at the same time. He is not
22 doing them all. He doesn't have to do all of the
23 jobs himself. He did not do all of the jobs
24 himself. We know he was not in the building many
25 times.

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2 Q. You testified earlier about some work
3 orders that you got and directed them to
4 Mr. Almonte, correct?

5 A. Yes.

6 Q. For instance, if there was some work
7 orders that were more substantive, like the
8 plumbing jobs or the electrical jobs that might
9 need to be done, Mr. Almonte testified and you
10 heard that testimony, he would tend to those jobs
11 himself, correct?

12 A. Yes. But the work orders speak for
13 themselves. It lists who did the jobs.

14 Q. So if he was the one that was taking
15 care of the heavier jobs, whether it is at 1195,
16 437, 1101 Manor, and perhaps 1056 Boynton, somebody
17 had to be in the building at that time, correct?

18 A. Yes.

19 Q. Who was it that was in the building?

20 A. We have several roving handymen. He
21 always had at least one to average of one to two
22 and many times three full-time handymen at his
23 disposal in his own building. I'm not talking
24 about people that he so called oversaw elsewhere.

25 I want to correct an assumption that you made

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2 about him being at 1195 Sherman. He did not go
3 much during his daily activities to 1195 Sherman.
4 Our agreement was that he was supposed to go there,
5 and he got paid separately for that in addition to
6 the regular wages, and that was supposed to be
7 after hours.

8 It would be a very rare type of emergency, if
9 there was no super or that type of thing, that we
10 would allow him to go elsewhere because that
11 building is far away.

12 Q. Give me an example of something that
13 would require him to go to 1195 Sherman?

14 A. An active leak flooding down that either
15 there is no super there and we found out about it
16 from someone in the building, a porter, or the
17 handyman that was there saying he can't resolve it,
18 he needs help. So, it was very rare that he went
19 there during business hours.

20 Q. So he went to 1195 Sherman after his
21 regularly scheduled hours, that is your testimony?

22 A. Yes. That was our agreement that he was
23 supposed to be doing, yes.

24 Q. What was the other sum and substance of
25 that agreement with respect to his work at 1195

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2 Sherman?

3 A. It stemmed out of that we lost the super
4 at that time period when this happened. He had
5 asked us recently around that period prior to that
6 that he wanted more money.

7 Q. Could I ask you what time period you are
8 talking about?

9 A. The time period of that super. I would
10 have to look it up.

11 Q. Do you remember?

12 A. No. I believe it was mid-2013. Maybe
13 early 2013.

14 Q. Continue.

15 A. I can verify. Super was stabbed and
16 there was a whole incident over there. Not
17 Mr. Almonte, the super was stabbed, and he was --
18 it was a major fiasco. You don't want to know
19 about it.

20 The handyman that I was sending there I was
21 not so confident. He said that he had wanted more
22 money, so I said, "You know what, I will give you
23 an additional job to supervise and be responsible
24 for that person's work," which meant he was to go
25 there at the end of his day and make sure that the

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2 jobs the guy said that he did were really done and
3 to make sure that the job was done properly.

4 It has happened on rare occasions that he
5 actually had to spend a couple of hours there.
6 Usually it was an in-and-out thing under an hour.
7 In and out checking jobs in the building takes
8 time. He would usually be there under an hour.

9 Q. Who was the handyman that wasn't cutting
10 it over there?

11 A. I would have to look.

12 Q. You don't remember the name?

13 A. At that time I don't remember. Right
14 after we put in someone we still needed him to
15 oversee. His name was Digno DeLo Santos.

16 Q. Could it be DeLos Santos?

17 A. He says his name DeLo.

18 Q. For his work at 1195 Sherman, those
19 orders came from you, correct?

20 A. Yes, came from me. Yes. No one else.

21 Q. 1195 Sherman has principals that are
22 Mr. Tabak and Mr. Abraham Finkelstein, correct?

23 A. Yes.

24 Q. The type of work again that Mr. Almonte
25 was going to be doing over there was the same as

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2 his work or similar as what was going on at 437

3 Morris Park?

4 A. I don't want to belittle his work at 437
5 Morris Park. 437 Morris Park is a bigger building,
6 with older structure that needed work. Over there
7 didn't need much work.

8 Q. You testified it was a gut and replace
9 and it was a newer building?

10 A. Yes.

11 Q. I'm talking about the tasks were
12 similar, that it was maintenance, it was sometimes
13 plumbing?

14 A. He didn't do it. I don't want you to
15 think that he was busy doing that work. There was
16 one period where I told him, "Listen, I'm paying
17 you all this." The process was going on. The guy
18 didn't do the work he said he was going to and I
19 made him go do it. I made him go spend actual
20 several hours to go do the jobs himself and not --
21 because the fellow there was unreliable. It was
22 not done the way it was supposed to be done.

23 Q. The fellow is the one DeLo Santos or was
24 it the one before that?

25 A. It could have been. He was familiar

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2 with that building because he was overseeing roving
3 employees in general. He was familiar with the
4 building.

5 Q. You testified I believe previously that
6 Mr. Almonte had received a loan or maybe even two
7 loans from the company, correct?

8 A. Yes.

9 Q. Did you know what those loans were for?
10 I believe you testified earlier it was for some
11 immigration issue.

12 A. Right. He had come to us saying that he
13 was stuck in a rut. He had processed immigration
14 and he showed me the paperwork and now he needs
15 money that he didn't have in order to do the next
16 phase. I'm not sure if they were holding him
17 hostage saying they will not give it to you. The
18 bottom line is he needed the money. So we gave him
19 the loan so he could finish the process.

20 Q. I will show you what's been marked as
21 Plaintiff's Exhibit 17. Here, this is a paper with
22 the letterhead of 437 Morris Park, LLC. And if you
23 could, take a minute to review that.

24 A. Okay.

25 Q. This is a check for \$3,000, 500 of which

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2 was for a vacation, and the other 2,500 was to be a
3 loan?

4 A. Yes.

5 Q. It is going to be repaid in 2013 in
6 installments of \$48 each week, correct?

7 A. Yes.

8 Q. Mr. Almonte, Manuel Almonte's signature
9 appears on this document, correct?

10 A. Yes.

11 Q. What is the date on the document?

12 A. 12-31-2012.

13 The document is dated 12-14, and he signed it
14 on 12-31.

15 Q. So it was done in December of 2012?

16 A. Yes.

17 Q. What's been marked as Plaintiff's
18 Exhibit 20, there is a part of this that's a pay
19 stub on the bottom. It shows a deduction in March
20 here of \$48. That coincides with this document,
21 correct?

22 A. This is my handwriting. A note that we
23 stapled there. That is complicated. I need an
24 hour to figure that out next.

25 Q. I'm asking about on the right-hand side,

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2 you see a loan?

3 A. Yes. That would be the repayment that
4 he agreed to.

5 Q. These documents also reflect in these
6 times also there is a loan here for \$48
7 reimbursement repayment and \$48 repayment over
8 here. These documents reflect what was made as a
9 result of that agreement, correct?

10 A. Yes. And you see the year-to-date
11 amount is growing there.

12 Q. On the right, yes. Year to date.

13 A. It became that by this time period.

14 Q. April of 2013, just to be clear.

15 A. Yes. And that.

16 Q. On the bottom here, is this the loan
17 balance?

18 A. I believe so. Look at the pay stub.

19 Q. It says balance. On Bates 356.

20 A. This is probably the last paycheck.

21 This is possibly his last pay check and that is why
22 I noted that.

23 Yes.

24 Q. The next week is deducted 48 and it
25 shows on Bates 356 that there is a balance of 1780,

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2 correct?

3 A. Yes.

4 Q. I will now show you what's been marked
5 as Plaintiff's Exhibit 19. Bear with me on the
6 numbering here. It is a document bearing the Bates
7 numbers Plaintiff's Exhibit 003 through Plaintiff's
8 Exhibit 0020. And the first two pages are
9 Plaintiff's 001 and 002. They have been placed in
10 the back solely because of the dates that are on
11 the checks. I wanted to keep it sequential.

12 Have you seen those documents before?

13 A. I'm familiar with them. I didn't
14 necessarily see them. I know what they are.

15 Q. What do you know those to be at least?

16 A. This is in lieu of a pay stub. If you
17 have direct deposit, the employees get this.

18 Q. Whose name is on that?

19 A. This is Nestor Almonte.

20 Q. Could you please tell me what dates
21 appear in the middle for the check date?

22 A. The week starting and end dates. The
23 start is August 7, 2013 and ends August 13, 2013.

24 Q. I will clarify. What date was the check
25 date?

1 CHANINA KLAHR

2 A. The check is August 15.

3 Q. That's the 8-15-2013 check?

4 A. Yes.

5 Q. If you flip to the last page. What is
6 the check date on that particular check?

7 A. December 6, 2013.

8 Q. If you would notice, please, I will
9 point out something. On these direct deposit stubs
10 there are loan deductions, correct?

11 A. Yes.

12 Q. It also reflects a balance on this is
13 the first page, a balance of \$545?

14 A. Yes.

15 Q. This continues throughout these,
16 correct? On the first two pages under the company
17 name of 437 Morris Park for Nestor Almonte, there
18 were deductions made from his wages of \$35 on each
19 check, correct?

20 A. Yes.

21 Q. The third page is Plaintiff's Exhibit
22 0005. It's a Sherman Management Company under the
23 name Nestor Almonte. On this particular check
24 there was a \$48 deduction, correct?

25 A. Yes.

1 CHANINA KLAHR

2 Q. These deductions are from the pay of
3 Nestor Almonte, correct?

4 A. These deductions is this one person
5 named Almonte, who previously worked under Manuel
6 Almonte and now moved over his loan to his Nestor
7 Almonte name.

8 Q. Is there any document reflecting that
9 Nestor Almonte was going to have pay deducted from
10 his checks?

11 A. Maybe.

12 MR. VALLETTI: I will make a demand
13 for that document.

14 A. I don't know. That was definitely our
15 agreement.

16 Q. Was it in writing?

17 A. There was another such paper. That loan
18 agreement that you have, there is another one,
19 modified one. Not necessarily this one. I don't
20 recall exactly what it says. That thing was
21 modified and may explain why there is another
22 number here.

23 Q. That name appears to be Manuel Almonte,
24 though, correct?

25 A. Yes. That's who was working. That was

1 CHANINA KLAHR

2 his name.

3 Q. At this point these documents reflect
4 that Nestor Almonte under that name is having
5 deductions from his pay for loans. What I would
6 like to know is if you have the writing for Nestor
7 Almonte to have that pay deducted?

8 A. He agreed that should be transferred to
9 there.

10 Q. Did he do that verbally?

11 A. Definitely was verbally. The question
12 is is there something in writing. I don't know
13 what that second loan paper says that clarified
14 that one.

15 MR. VALLETTI: I will make a demand
16 for any document evidencing a loan to Nestor
17 Almonte authorizing deductions to be made
18 from his pay stubs.

19 MR. WEINBERGER: Follow up in writing.

20 MR. VALLETTI: Absolutely.

21 (Whereupon, at this time a recess was
22 taken.)

23 Q. Back on. I will refer again to a prior
24 exhibit to get clarification from Mr. Klahr. We
25 are looking again at Exhibit 17. It is the loan

1 CHANINA KLAHR

2 document signed by Manuel Almonte on 12-31-2012.

3 Would you like to explain a clarification for that?

4 A. I believe this is the second document
5 that was a correction or modification of the first
6 document, the check that we gave he asked for a
7 \$3,000 loan. We gave him that check and he ended
8 up applying part of that money towards his
9 vacation, as it states here, not on the first one,
10 and he only had to repay \$2,500 not the whole
11 3,000.

12 MR. VALLETTI: Mark that Plaintiff's
13 Exhibit 21.

14 (Whereupon, the above-referred to
15 document was marked as Plaintiff's
16 Exhibit 21 for identification, as of
17 this date.)

18 Q. I'm showing you what's marked
19 Plaintiff's Exhibit 21. We will be picking up
20 hopefully where we left off.

21 This is an earlier document which I believe is
22 referenced in the loan agreement. Does this
23 document reflect the original agreement before
24 modification?

25 A. Yes.

1 CHANINA KLAHR

2 Q. That was for \$3,000 to be paid in \$58
3 installments?

4 A. Yes.

5 Q. Later Plaintiff's Exhibit 17 comes in
6 and modifies that agreement?

7 A. I believe so. I recall something of
8 that nature. And that appears to correspond to
9 that.

10 Q. Did you authorize this loan or did you
11 have to get approval from someone else?

12 A. I had to get approval.

13 Q. Who did you get approval from?

14 A. Finkelstein and Tabak, either one or
15 both. Probably both.

16 Q. Did you give loans out to other
17 employees other than Mr. Almonte?

18 A. Yes.

19 Q. In order to do that, did you have to get
20 approval from Finkelstein, Tabak, one or the other,
21 or both?

22 A. Usually one.

23 Q. One of them would suffice?

24 A. Yes.

25 Q. Typically who would you approach to get

1 CHANINA KLAHR

2 authorization to give an employee a loan?

3 A. Finkelstein.

4 Q. Is there any particular reason why?

5 A. He signs the checks.

6 Q. When you say that he signs the checks,
7 what checks are you talking about?

8 A. Any check for any money. All of the
9 moneys that he signed. Paychecks, loans, whatever.
10 Any money that the super got.

11 Q. Mr. Finkelstein controlled the flow of
12 money from New Hope Funding into 437 Morris Park,
13 LLC, to your knowledge?

14 A. I don't know. He signed checks or from
15 the payroll company would be a facsimile of his
16 signature.

17 Q. I guess I will ask, to your knowledge,
18 where did Mr. Finkelstein get the money to pay
19 either loans or wages to employees of 437 Morris
20 Park?

21 MR. WEINBERGER: Objection.

22 A. I don't know.

23 Q. You don't know?

24 A. I don't know. As far as I know he
25 controls the bank accounts. I cannot say.

1 CHANINA KLAHR

2 Q. You say he controls the bank accounts.

3 Do you know where the banks were that had those

4 accounts?

5 A. I believe they all say J.P. Morgan

6 Chase.

7 Q. In 2013, did there come a time when at

8 that point Nestor Almonte's employment ended with

9 437 Morris Park and 1195 Sherman?

10 A. Yes.

11 Q. When did that occur?

12 A. He resigned I believe on December 2,

13 2013. Effective date of the next day, which would

14 have been Tuesday after 5:00 p.m. Probably the

15 3rd.

16 Q. When you say he resigned, did he resign

17 from 437 on that day, on 12-2, or 1195 Sherman on

18 that day?

19 MR. WEINBERGER: Objection as to

20 relevance. That's not part of this case.

21 It is another proceeding going on. That is

22 not relevant.

23 (Whereupon, a discussion was held off

24 the record.)

25 Q. When you say that he resigned on

1 CHANINA KLAHR

2 12-2-2013, was that from 1195 and 437, or was there
3 some sort of difference? What happened that day?

4 A. He resigned his entire position with our
5 company and all parts of it. He had -- this was an
6 outburst of something that was stemming for a few
7 months that we have documentation on, and he
8 surprisingly all of a sudden exploded with it now.

9 Q. When you say it had been building up for
10 a couple of months, what are you talking about?

11 A. There was an incident approximately a
12 month and a half, two months prior, I'm not sure of
13 the date. Let's say for argument's sake two months
14 prior, where he had gone AWOL. Absent without
15 leave. He had already prior to that exceeded his
16 sick days and all kind of everything and so we
17 didn't pay him. We didn't have any communication
18 with him. We had no idea where he was. Didn't
19 answer his phone. Only knew he was actually around
20 because a reliable employee of mine said that he
21 saw him one time during that week. So, he was
22 technically local.

23 We were aware that his wife and Wilton, his
24 brother-in-law, had left the country to a family
25 emergency. And when his wife left is when he went

1 CHANINA KLAHR

2 AWOL. That particular incident extended into a
3 retaliation. I don't know a better word to use.
4 Since we didn't pay him so he is now not going to
5 work. His wife came back. You didn't pay me, so
6 now I'm not going to work the next week. He went
7 two weeks without pay.

8 Q. What do you mean two weeks without pay?

9 A. He didn't work for two weeks. He was
10 not paid. And we either -- Finkelstein or Tabak
11 tried to talk to him and find him, and eventually
12 they sat down with him. The whole entire story was
13 recorded onto paper, which he signed an agreement
14 to everything that transpired and how we are going
15 to move forward.

16 It sort of moved forward nicely for a couple
17 of weeks or two months. And then this day of
18 December 2, when I confronted him about something,
19 he exploded and said, "I know what you guys are
20 doing. At first you did this. At first you didn't
21 pay me. I quit. I'm not working no more. I don't
22 like what you guys are doing to me."

23 MR. WEINBERGER: Objection to
24 relevance.

25 Q. He was employed until December 2013?

1 CHANINA KLAHR

2 A. I believe so, until that date. Whatever
3 the date it was. December 2nd or 3rd, 2013.

4 Q. At that time, actually from April 2013,
5 he had filled out his employment application and
6 acceptance forms using the name Nestor Almonte?

7 A. Makes sense. Yes.

8 Q. I will show you what's been marked as
9 Exhibit 18.

10 A. Okay.

11 Q. Have you seen that document before?

12 A. Yes.

13 Q. What is that document?

14 A. A document made by the super using the
15 name of Manuel Almonte. At the time that he
16 stopped working that name he filled out this
17 document.

18 Q. What is the date on that document?

19 A. June 13, 2013.

20 Q. You were present for Mr. Almonte's
21 deposition, correct?

22 A. Yes.

23 Q. He testified that he had a son, correct?

24 A. Yes.

25 Q. The son's name was Manuel Almonte,

1 CHANINA KLAHR

2 correct?

3 A. He never worked for me, right.

4 Q. I didn't ask that question. He had a
5 son named Manuel, correct?

6 A. Yes.

7 Q. He also testified that Manuel Almonte
8 worked for the company, correct?

9 A. That is wrong.

10 Q. I'm asking you what he testified to.
11 Did Nestor Almonte testify that Manuel Almonte also
12 worked for the company?

13 A. He said something about a shadow or
14 whatnot. Possibly he meant that.

15 Q. You were sitting in seven hours' worth
16 of depositions?

17 A. Right.

18 Q. For Mr. Almonte alone?

19 A. Yes.

20 Q. He testified during that time that
21 Manuel was his shadow, correct?

22 A. Yes.

23 Q. What he meant by that, being his shadow,
24 he meant Manuel was working alongside him at 437
25 Morris Park, correct?

1 CHANINA KLAHR

2 MR. WEINBERGER: Objection as to form.

3 If you can answer.

4 A. He implied that. Which is untrue.

5 Q. Did he testify to that?

6 A. Yes. A lie.

7 Q. He also testified that his son was
8 terminated from the company in June of 2013,
9 correct?

10 A. The process is that the dad that was the
11 super was working under the name Manuel Almonte,
12 who we now know was the son, which we did not know
13 at the time. Nobody was terminated. It was a
14 process at his request to go under his own name,
15 which he provided documentation. That is him.

16 Q. He provided that documentation in April
17 of 2013, correct?

18 A. Yes. So?

19 Q. So this document is dated June 2013,
20 correct?

21 A. Yes. So?

22 Q. The name on that document is Manuel
23 Almonte, correct?

24 A. Yes.

25 Q. This document, in fact, coincides with

1 CHANINA KLAHR

2 Mr. Almonte's testimony that his son was terminated
3 in June of 2013; is that correct?

4 A. No.

5 Q. Why not?

6 A. Because this applies to that issue that
7 I'm telling you about. That the dad was the super,
8 which turned out he was working under his son's
9 name. The son never worked. I know you don't want
10 to hear it, but that is part of this thing. The
11 son never worked for the company, never asked to
12 work for the company, and we never asked him to
13 work for the company.

14 Q. Why is there a termination sheet here,
15 the employment end compensation statement, for
16 Manuel Almonte dated almost two months after you
17 knew Nestor's name was Nestor Almonte?

18 A. It is not a termination. He was signing
19 that we had paid him all the money that was owed to
20 Manuel Almonte when he worked under Manuel
21 Almonte's name. There was no further money owed.

22 Q. Isn't that an employment end
23 compensation statement?

24 A. Yes. Not a termination letter.

25 Q. When an employment ends, do you not have

1 CHANINA KLAHR

2 your employees fill out an employment end
3 compensation statement?

4 A. Occasionally I try to get that.

5 Q. Somebody's employment ended here,
6 correct?

7 A. Right.

8 Q. Manuel Almonte's employment ended there?

9 A. The dad stopped working under the name
10 Manuel Almonte, and we needed something to say that
11 we paid him and we don't -- this was all done in
12 good faith, that he was moving on and doing this.
13 There was no problems. We said we just want to
14 know. You're not going to come back at the end of
15 the calendar year, so now we are doing it.

16 Q. Why didn't you do it in April when he
17 told you his name was Nestor Almonte when he filled
18 out his employment application and acceptance form?

19 A. This may very well have been the time
20 that it took. It may have happened. I don't know.

21 Q. Let's look.

22 A. Okay.

23 Q. This is the employment acceptance form,
24 which is labeled as Plaintiff's Exhibit 7. This is
25 the operative document we are discussing, April

1 CHANINA KLAHR

2 2013. Is that not filled out with the name Nestor
3 Almonte?

4 A. It is. We need to check the payroll. I
5 want to answer this. In order to answer I need to
6 know when that happened. Maybe this is a scam. We
7 know he has been concocting a very big scam. When
8 you saw last time that he made false time sheets.

9 Q. But you actually filled out this
10 document?

11 A. Not his name.

12 Q. You testified that you filled out this
13 document, correct?

14 A. Right. I gave it to the guy in front of
15 me and he wrote his name and dated it and signed
16 it.

17 Q. Now, this is a document originating from
18 437 Morris Park, correct?

19 A. Yes.

20 Q. This document is an employment end
21 compensation statement, correct?

22 A. This is just confirming something
23 happened two months prior. Look at what it says.

24 Q. You got Manuel Almonte's name, but you
25 already knew Nestor Almonte's name in April.

1 CHANINA KLAHR

2 A. This is for Manuel Almonte.

3 Q. I know that. Do you? That was when the
4 son stopped working for the company.

5 A. No. The son never worked for the
6 company a day in his life. If he did, if his dad
7 asked him to do something, that is unknown to me.
8 Okay? I don't believe that he ever did anything,
9 anyway. Not even what he was claiming, Oh, my son
10 did painting, whatever.

11 Q. You know that Abraham testified in this
12 case, correct?

13 A. I know he testified.

14 Q. You were at the deposition?

15 A. Yes.

16 Q. He testified that he had actually given
17 directives to Nestor Almonte's son?

18 MR. WEINBERGER: Objection.

19 A. No. He retracted the nature of the way
20 it was said. He said he remembers talking to him.
21 He doesn't believe the guy did anything. And he
22 was very clear that the job was never done, period,
23 to this date.

24 Q. Are you denying that Abraham had a
25 conversation with Manuel about the pressure cleaner

1 CHANINA KLAHR

2 in the basement of 437 Morris Park?

3 MR. WEINBERGER: Objection.

4 A. Whatever he said is written in the
5 testimony. Let's look at it together.

6 Q. You were there, correct?

7 A. I want to look at it together.

8 Q. You were there, correct?

9 A. I was there, yes.

10 Q. You heard Abraham's testimony?

11 A. I heard him retract from the way it was
12 presented.

13 Q. What did he retract?

14 A. That it was not the son. It was -- he
15 cannot identify this person, cannot identify that
16 this person is the person that he spoke to. And
17 the job that he was discussing was never done, so
18 nobody did that work. Which he clearly -- which
19 the mom testified that that was the sole job the
20 son claimed to have done.

21 Q. The mother testified to that?

22 A. Yes.

23 Q. You were at that deposition too?

24 A. Yes.

25 Q. You sat in on a lot of depositions in

1 CHANINA KLAHR

2 this case, right?

3 A. Yes.

4 Q. You know what everybody said before you
5 sat in that chair, didn't you?

6 A. Absolutely not.

7 Q. You don't know what everybody said
8 before you sat in that chair, you heard everyone's
9 testimony, correct?

10 A. When I heard it at the time.

11 Q. So they all happened before today,
12 correct?

13 A. Yes. What are you trying to say?

14 Q. What I'm trying to say, you heard
15 everyone's testimony before giving your own?

16 A. When? Today?

17 Q. Before giving your own today.

18 A. Okay.

19 Q. So you are shaping your testimony to
20 match what everybody else said before?

21 A. No.

22 MR. WEINBERGER: Objection.

23 A. I'm telling you the facts. And let's go
24 back to that testimony, maybe this is the time
25 where I had that outburst and said he is a liar and

1 CHANINA KLAHR

2 you told me I'm not allowed to make any comments.

3 Q. I didn't say that.

4 A. Really?

5 Q. Let's go back to Abraham's comments
6 regarding Manuel Almonte, the son. Abraham
7 testified that he had talked to Manuel Almonte
8 about using a water pressure machine that cleans
9 the boiler, correct?

10 MR. WEINBERGER: Objection. I'm not
11 sure that is accurately stated.

12 Q. I said that he talked to him.

13 MR. WEINBERGER: I will let him
14 finish. Then I will correct him.

15 (Whereupon, the requested portion was
16 read back by this reporter.)

17 A. His response to that question or that
18 conversation was no, he was not sure if that was
19 that person. That was one thing that he said. And
20 the second thing that he said is that the job was
21 never done, anyway.

22 Now, I'm not sure if that is part of the
23 testimony, but he told it to me at the time, that
24 the job was never done, anyway.

25 Q. Told you what at what time?

1 CHANINA KLAHR

2 A. At the time of the deposition he said,
3 which should be part of the deposition, he said
4 that job was never -- that task that he was talking
5 to someone about, which may have been a handyman,
6 not the son, he cannot identify the son, that task
7 was never done to this date.

8 So that is the time that he spoke to him one
9 time to tell him to do something. Nobody did it.

10 Q. You were also present at the deposition
11 of Mr. Tabak, correct?

12 A. No.

13 Q. That one you don't know about?

14 A. Not yet. You are going to tell me.

15 Q. Were you at Manuel Almonte's deposition?

16 A. The kid?

17 Q. Yes.

18 A. I was not at the kid's, no.

19 Q. We are good on that.

20 (Whereupon, a discussion was held off
21 the record.)

22 MR. VALLETTI: Mark that 22.

23 (Whereupon, the above-referred to
24 document was marked as Plaintiff's
25 Exhibit 22 for identification, as of

1 CHANINA KLAHR

2 this date.)

3 Q. I will show you what's been marked as
4 Plaintiff's Exhibit 16 for identification, a
5 two-page document. Take a look. Tell me when you
6 are finished.

7 A. Okay.

8 Q. So, the first document I'm going to show
9 you is page 1 of the two. Have you seen this
10 document before?

11 A. I don't believe so.

12 Q. Do you know what it is?

13 A. It says it is a monetary benefit
14 termination letter for unemployment insurance.

15 Q. From the State of New York?

16 A. Yes.

17 Q. What name appears on that document?

18 A. Manuel Almonte.

19 Q. What period, if you can, in the middle
20 of the page, it says Basic Base Period. Above
21 that.

22 A. October 1, 2012, to September 30, 2013.

23 Q. That is the base pay for Manuel A.
24 Almonte, correct, according to that sheet?

25 A. Yes.

1 CHANINA KLAHR

2 Q. I will show you a page 2.

3 A. Okay.

4 Q. Have you seen that document before?

5 A. No.

6 Q. Do you know what it is?

7 A. It's monetary benefit of termination

8 from the Department of Labor New York State

9 Unemployment Insurance.

10 Q. What name does that document bear?

11 A. Nestor Almonte.

12 Q. If you look for the base period, what

13 does that say?

14 A. January 1, 2013 through December 31,

15 2013.

16 Q. It looks as though two people had filed

17 for unemployment insurance benefits here.

18 A. Okay.

19 Q. On the first one there is a base period

20 from October 2012 to September 2013, and the second

21 one is January 1, 2013 through December 31, 2013,

22 correct?

23 A. Yes.

24 Q. You appeared on behalf of 437 Morris

25 Park and 1195 Sherman previously for the case of

1 CHANINA KLAHR

2 Nestor Almonte, correct?

3 A. Yes. Believe so.

4 Q. In that hearing, you contend that Nestor
5 Almonte was not terminated, he in fact resigned his
6 position, correct?

7 A. That's correct, that's what happened.

8 Q. At same point we have that Manuel
9 Almonte had also filed, correct?

10 A. Yes. I see that.

11 Q. Did you appear on behalf of the employer
12 here at 437 Morris Park for Manuel's case?

13 A. No.

14 Q. Why not?

15 A. I don't always appear.

16 Q. Do you know if anybody else appeared?

17 A. I don't know.

18 Q. Do you know if anybody else objected to
19 the collection of benefits under that name?

20 A. I don't know. I doubt it.

21 Q. Why would you doubt it?

22 A. Because I don't recall, and I would have
23 been the one, probably.

24 Q. As far as you know, no one refuted the
25 unemployment benefits claim of Manuel Almonte from

1 CHANINA KLAHR

2 437 Morris Park and 1195 Sherman?

3 A. We don't generally refute the
4 unemployment. I don't dispute these things unless
5 I have some special reason to. Generally we get
6 many of them and we don't dispute them.

7 Q. You are, or the company is, and you are
8 appearing on behalf of 437 Morris Park and 1195
9 Sherman for Nestor Almonte, correct?

10 A. Yes.

11 Q. And your basis there is that he
12 resigned, to reiterate, correct?

13 A. The basis was that we decided that -- it
14 had nothing to do with whether he resigned or
15 didn't resign. He had -- I want to talk to my
16 lawyer.

17 Q. Not while a question is pending.

18 A. I don't have -- I have to bring up
19 another incident.

20 MR. WEINBERGER: Objection. Anyway,
21 it's irrelevant.

22 MR. VALLETTI: It's not irrelevant.
23 He has to finish answering.

24 A. The reason why we decided to dispute
25 this is because when he resigned we had a verbal

1 CHANINA KLAHR

2 agreement with him, Mr. Tabak, myself, I'm not sure
3 if Abraham was there. Several meetings with him.

4 Q. Mr. Almonte?

5 A. Yes. And we had a verbal understanding
6 that he was to vacate the property by a certain
7 time frame. He reneged on that, and it went to
8 court and dragged on, to housing court. He called
9 the Fire Department on us and made all kind of
10 false claims on us while he was staying there, and
11 we all of a sudden learned it was not somebody that
12 was dealing diplomatically with us as he was long
13 before.

14 We had a nice relationship, and we didn't feel
15 that we should be nice to him.

16 Q. The basis for you to refute his
17 unemployment insurance claim is because he wasn't
18 playing nice?

19 A. It wasn't true. It wasn't true. He
20 didn't deserve it, and we decided to stand up to
21 it.

22 Q. At this point there are two people
23 claiming benefits for a relevant time period in
24 this case. I want to know what your explanation is
25 for allowing two people to claim benefits and not

1 CHANINA KLAHR

2 refute the earlier one, for clearly a relevant time
3 period during this case.

4 A. Because it is not something that we
5 generally do.

6 Q. Isn't this the same person?

7 A. It didn't happen the same time. To my
8 knowledge, I only know about this one. This
9 whatever. It didn't happen at the same time.

10 Q. Aren't these the same people? Your
11 testimony is that Manuel Almonte and Nestor Almonte
12 were the same person for a long period of time.

13 A. Yes, but he didn't make the claim at the
14 same time. This is not the same. I believe he
15 made the claim a whole different time, months ahead
16 of this.

17 Q. Would he make the claim for unemployment
18 insurance benefits while he was still employed?

19 A. Possibly. I don't know. I'm not
20 familiar with this. I don't deal with this. I
21 don't know what it is.

22 Q. I will show you what's been marked as
23 Plaintiff's Exhibit 22. I will show it to your
24 lawyer first.

25 This is something that we haven't had in this

1 CHANINA KLAHR

2 case, but it is a public document.

3 A. Okay.

4 Q. Tell me when you are finished with that.

5 A. Okay. I'm finished.

6 Q. Could you refresh my recollection as to
7 the dates. What was your final date or month
8 employed with F&T Management?

9 A. Early September 2014.

10 Q. Do you know who Geraldo Caraballo is?

11 A. I believe I do. I'm not sure. I
12 believe so.

13 Q. Who do you know Geraldo Caraballo to be?

14 A. A very short-term employee handyman of
15 1105 Sherman.

16 Q. Had you given orders to Mr. Caraballo?

17 A. Yes. If it's the guy. I'm not sure. I
18 believe I know who the character is. I'd have to
19 see a picture to be sure.

20 Q. Do you know the nature of this
21 complaint?

22 A. No.

23 Q. You were in charge of payroll for 1195
24 Sherman, too, correct?

25 A. Yes.

1 CHANINA KLAHR

2 Q. Do you have any reason to believe why
3 Mr. Caraballo would institute a lawsuit against
4 1195 Sherman for unpaid overtime?

5 MR. WEINBERGER: Objection.

6 A. No. He's not owed any money.

7 Q. Nobody is owed any money from this
8 company, correct?

9 A. We have never been found guilty of such
10 a thing, even though several people have tried.

11 Q. Has there ever been a settlement?

12 A. Possibly.

13 Q. So the company has paid a settlement for
14 unpaid overtime?

15 MR. WEINBERGER: Objection.

16 A. On a marginal -- they agreed a minimal
17 settlement of less than \$10,000, a laughing stock.

18 Q. Would you like something to refresh your
19 recollection as to the amount?

20 A. That's what I know of. There may be
21 something I don't know of.

22 Q. Maybe there is another one?

23 A. Maybe.

24 MR. VALLETTI: Mark this as 23.

25 (Whereupon, the above-referred to

1 CHANINA KLAHR

2 document was marked as Plaintiff's
3 Exhibit 23 for identification, as of
4 this date.)

5 Q. Look at what's been marked as 23. It's
6 also been marked as Finkelstein 4 for his
7 deposition. Take a look.

8 Have you seen that document before?

9 A. Yes.

10 Q. You are familiar with it?

11 A. Yes.

12 Q. What do you know that document to be?

13 A. A charge by Ernesto Hernandez.

14 Q. What do you mean a charge?

15 A. A claim. A suit. A lawsuit.

16 Q. Could you read what that says on the top
17 right here?

18 A. Settlement and agreement.

19 Q. It is a settlement agreement?

20 A. Yes.

21 Q. It was brought by Ernesto Hernandez. Do
22 you know why he brought that suit?

23 A. Yes. I'm very familiar with it.

24 Q. Why did he bring that suit?

25 A. Well, I don't know exactly what the

1 CHANINA KLAHR

2 claims were, but we established that his claims are
3 false.

4 Q. Did you?

5 A. Yes.

6 Q. How?

7 A. Video testimony.

8 Q. So the company paid \$11,000 in
9 settlement fees to a person whose claims were
10 false?

11 A. Yes. It was not worth the legal thing
12 of going through. It was a decision that was made.
13 Yes. We have video testimony of that, of Ernesto
14 Hernandez.

15 Q. Who testified in that case?

16 MR. WEINBERGER: If you know. I will
17 object to the form.

18 If you know.

19 Q. He says he has video testimony. Who
20 testified?

21 A. We obtained video. I obtained video
22 testimony of a conversation with Ernesto Hernandez
23 and the superintendent of the building where he
24 admitted in the video, live video and recorded,
25 both, which was in Spanish, which was then

1 CHANINA KLAHR

2 translated, that he said things that was not what
3 the suit said. In other words, he contradicted the
4 suit.

5 Q. Who recorded him?

6 MR. WEINBERGER: Objection. What's
7 the relevance?

8 Q. Willfulness.

9 A. I did.

10 Q. Were you a party to that conversation?

11 A. Yes, I was.

12 MR. WEINBERGER: Objection.

13 Q. Where did the conversation take place?

14 A. In my building.

15 Q. Who was party to that conversation?

16 MR. WEINBERGER: Objection. We are
17 not going to answer that anymore.

18 Q. He said it was in Spanish. Do you speak
19 Spanish?

20 A. No. That's why we gave it to the
21 translator, a company.

22 MR. WEINBERGER: Objection.

23 Irrelevant to the case.

24 MR. VALLETTI: I'm going to have to
25 say it's actually very relevant because it

1 CHANINA KLAHR

2 shows willfulness that these same parties
3 are repeatedly sued for failure to pay
4 overtime, and you know as their attorney
5 that they keep getting sued.

6 MR. WEINBERGER: I'll say this on the
7 record. You know one of them may settle for
8 what you mentioned, if you want to go on the
9 record we're going to go into this. I don't
10 want to go into this. If you want to ask
11 him about the other one that you talked
12 about, there may be some facts that come out
13 that will be not so great for you. So if
14 you want to do it, it is all irrelevant. We
15 are not going into other lawsuits and
16 settlements. Some of them were part of
17 settlement and confidentiality. I think
18 there's confidentiality in here as well.

19 MR. VALLETTI: It's on ECF.

20 MR. WEINBERGER: I understand that.
21 But we are not getting into the details of
22 it. So this is irrelevant. It doesn't go
23 to willfulness, and it's irrelevant.

24 MR. VALLETTI: I think repetitive
25 behavior speaks to willfulness too, but

1 CHANINA KLAHR

2 that's the law.

3 MR. WEINBERGER: Good. If you want to
4 bring that up and any others up, I can't
5 stop you, but it is irrelevant to this
6 proceeding.

7 MR. VALLETTI: I don't really want
8 your backhanded threat, that stuff is going
9 to come up in that case which hurts mine,
10 but, hey, listen, let's play nice.

11 MR. WEINBERGER: It's not a threat.
12 I'm just telling you a fact. I can't get
13 into the other one you brought up. If you
14 did, you would realize it was not
15 willfulness. It was willfulness in other
16 ways but not on our side.

17 That is neither here nor there. If
18 you want I will tell you off the record
19 about the other one attorney to attorney, if
20 you want to know.

21 MR. VALLETTI: I think I am finished
22 with my questioning at this time. So no
23 further questions.

24 (Whereupon, a discussion was held off
25 the record.)

1 CHANINA KLAHR

2 EXAMINATION BY STUART WEINBERGER, ESQ.

3 MR. WEINBERGER: Mr. Klahr, did you
4 ever hire the son, Mr. Almonte, Manuel
5 Almonte, whatever you want to call him? Did
6 you ever hire the son of the superintendent
7 at 437 Morris Park Avenue?

8 A. No.

9 Q. Was the son, who we now know as Manuel,
10 ever authorized to work at 437 Morris Park Avenue?

11 A. No, and didn't work anywhere else, to my
12 knowledge.

13 Q. Did he ever work at 1195 Sherman Avenue?

14 A. No.

15 Q. When was the first time that you heard
16 the phrase "shadow"?

17 A. This case, in your office, at the
18 deposition of this case.

19 Q. Was there any reason that you would have
20 hired Manuel Almonte in this case, the son?

21 A. No.

22 Q. Look at what's been marked as
23 Plaintiff's Exhibit 17.

24 A. Okay.

25 Q. Who were you loaning money to at that

1 CHANINA KLAHR

2 time?

3 A. The superintendent. The dad.

4 Q. What name was he using at the time?

5 A. Manuel Almonte.

6 Q. Plaintiff's Exhibit 11, take a look.

7 A. Okay.

8 Q. Who was being paid these moneys that's
9 reflected in Number 11?

10 A. The superintendent.

11 Q. Who was?

12 A. Manuel Almonte, the dad. We only had
13 one employee.

14 Q. Did the son ever work for 437 Morris
15 Park?

16 MR. VALLETTI: Objection. Asked and
17 answered.

18 A. No.

19 Q. Did the son ever work for 1995 Sherman
20 Avenue?

21 A. No.

22 Q. When was the first time that you learned
23 that the son claimed to have worked in this
24 building?

25 A. The lawsuit papers.

1 CHANINA KLAHR

2 Q. When payments were made by 437 Morris
3 Park and 1195 Sherman Avenue, who were the payments
4 made to in this case for the work that was done?
5 Was it the son or the father?

6 MR. VALLETTI: Objection.

7 A. The father. The son never worked for
8 us.

9 MR. WEINBERGER: Nothing further.

10 Thank you.

11 FURTHER EXAMINATION BY ROBERT VALLETTI, ESQ.

12 MR. VALLETTI: Just to clarify, when
13 you said that he asked the question when was
14 the first time that you heard the phrase
15 "shadow," you testified it was at a
16 deposition of this case. Do you remember
17 which deposition?

18 A. One of the early depositions was the
19 first time it was mentioned. I was at all the
20 depositions in the Almonte case.

21 Q. Do you remember which deposition in
22 particular?

23 A. No.

24 Q. Was there ever a conversation where you
25 told Nestor Almonte that his son would be his

1 CHANINA KLAHR

2 shadow?

3 A. Never.

4 Q. Regarding the loans, the deductions here
5 were made on the payroll records to Manuel Almonte,
6 correct?

7 A. Yes.

8 Q. The deductions also continued on the pay
9 stubs for Nestor Almonte, correct?

10 A. When he switched over, yes.

11

12 (continued)

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1 CHANINA KLAHR

2 MR. VALLETTI: That's all I have.

3 Thank you.

4

5 (Whereupon, the examination of this
6 witness was concluded at 2:55 P.M).

7 * * * *

8

9 I have read the foregoing record of my
10 testimony taken at the time and place noted in the
11 heading hereof and I do hereby acknowledge it to be
12 a true and correct transcript of same.

13

14

15

16 CHANINA KLAHR

17

18 Subscribed and sworn to
19 before me this _____ day
20 of _____, 2015.

21

22 _____

23

24 NOTARY PUBLIC

25

1 CHANINA KLAHR

2

3 I N D E X

4

5	EXAMINATION OF	BY	PAGE
6	Chanina Klahr	Mr. Valletti	110-241, 244-246
7		Mr. Weinberger	241-244

8

9 E X H I B I T S

10

11	PLAINTIFF'S	DESCRIPTION	PAGE
12	10	Document	147
13	11	Document	151
14	12	Document	174
15	13-20	Documents	184
16	21	Document	212
17	22	Document	228
18	23	Document	237

19

20 I N F O R M A T I O N T O B E S U P P L I E D

21	PAGE	DESCRIPTION
22	118	Request application
23	142	Request employment acceptance
24		form

25 (continued)

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CHANINA KLAHR

159 Request pay stubs
178 Request notebook
195 Request evidence
210 Request pay documents
211 Request loan documents

1 C E R T I F I C A T I O N

2

3 I, Kimberly Dean, a Notary Public of the State
4 of New York do hereby certify:

5 That the testimony in the within proceeding
6 was held before me at the aforesaid time and place.

7 That said witness was duly sworn before the
8 commencement of the testimony, and that the
9 testimony was taken stenographically by me, then
10 transcribed under my supervision, and that within
11 transcript is a true record of the testimony of
12 said witness.

13 I further certify that I am not related to any
14 of the parties to this action by blood or marriage,
15 that I am not interested directly or indirectly in
16 the matter in controversy, nor am I in the employ
17 of any of the counsel.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand this _____ day of _____, 2015.

20

21

22

23

24 KIMBERLY DEAN

25